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Labor Legislation in Virginia, 1865-1938

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LABOR LEGISLATION

IN

VIRGINIA

1865 - 1938

BY

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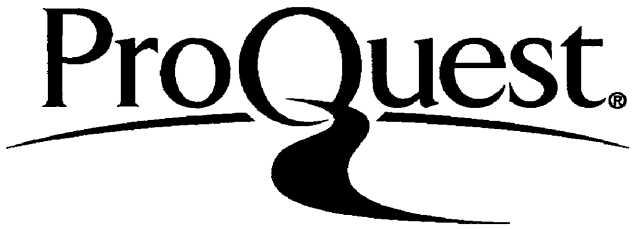

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INTRODUCTION

The object of this study is to furnish a brief summary of the development of legislative measures for the protection of laborers in the Commonwealth of Virginia. An objective method has been followed, with a minimum of critical analysis. For the sake of brevity and lucidity, the cumbersome wording of statutes has been avoided wherever possible. Consideration has been given the old-age insurance provision of the Federal Social Security Act of 1935 because of its effect upon the workers in this state. The provisions of the Federal Fair Labor Standards Act of 1938 are also included in the Appendix because the writer believes that it will serve as a pattern by which future laws in Virginia may be modeled.

Chapter I

EMPLOYMENT AND UNEMPLOYMENT

1. General Regulations

In general, the personnel departments of industries are responsible for policies which govern human relationships in industry. These departments are a potent influence in maintaining amiable personnel relationships. They attempt to readjust discordant situations by shifting employees to other departments rather than discharging them. In the event that the latter becomes necessary, a department does not hinder him in securing other work.

These conditions in industry have not always existed, for it became necessary in 1891 for the Virginia Legislature to prevent by law any employer from willfully preventing a former discharged employee from securing other employment.[1] An amendment of 1922 gave this protection even to those who left work voluntarily.[2]

2. Private Employment Agencies

Virginia has attempted to regulate private employment agencies by the passage of a law in 1923 whereby no one may operate an employment agency for profit without securing a license by depositing a

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[1] Acts of Assembly, Virginia, 1891, 1892, 976.

[2] Acts of Assembly, Virginia, 1922, 607.

bond of five thousand dollars with the State Department of Labor for each territorial division in which an agency operates.[1]

Formerly, private employment agencies charging fees and doing business for profit practiced many policies which were contrary to good business principles. Among these were misrepresentation of wages and conditions of work, sending applicants to immoral resorts and splitting fees with foremen, thereby inducing frequent discharges by him. These practices have brought about the restrictive legislation designed to insure against such fraud and extortion.[2]

3. Public Employment Agencies

The depression of 1914 and 1915 brought a great increase in the number of public employment agencies throughout the several states. The war and post-war depression brought up to thirty-six the total number of states having passed laws in this regard. Virginia established her system of public offices in 1924, by providing for the maintenance of free employment offices for those who are legally qualified and seek employment. The law provides that the Commissioner of Labor may at his discretion establish and direct free employment offices, to facilitate employer and employee contacts as well as to enter into co-operative agreements with other governing authorities.[3]

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[1] Acts of Assembly, Virginia, 1928, 4Principles of Labor Legislation,

[2] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 7.

[3] Acts of Assembly, Virginia, 1924, 636.

For the purpose of administering the provisions of this act the legislature appropriated twenty-five hundred dollars per annum to be expended by the Commissioner of Labor.[1] This amount was increased to thirty-five hundred dollars by the Special Session of the legislature of 1933. At the same time the legislature accepted the terms of the Wagner-Peyser Employment Service Act designating the State Department of Labor and Industry as the agency to co-operate with the United States Employment Service in administering the provisions of this federal law.

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[1] Acts of Assembly, Virginia, 1924, 635.

Chapter II

REGULATION OF THE WORKING PERIOD AND OF WAGES

1. Maximum Hours For Children, Women And Men

The first legislation for the regulation of hours in the United States applied to children. In 1842, a group of citizens in the State of Massachusetts petitioned its legislature to enact prohibitory child labor legislation. This group believed that the existing hours were detrimental to the welfare of children. The initial step was taken that year by the passage of a ten-hour day law for those under twelve years of age.[1]

Virginia's first legislation for the protection of child workers restricted the hours of those working in factories to ten hours a day. This law was applicable to only those under fourteen years of age.[2] This ten-hour maximum was extended to include not only factories but stores and shops as well in 1912.[3] This, however, did not apply to fruit and vegetable canneries or stores on Saturday nights. The ten-hour day maximum was raised in 1914 to cover all children under 16 years of age and six days was fixed as the maximum

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[1] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 85.

[2] Acts of Assembly, Virginia, 1889-90, 150.

[3] Acts of Assembly, Virginia, 1912, 568.

work week.[1] The employment certificate containing proof of age was made a prerequisite to such employment. The exceptions under this law exempted children working in factories which were owned by their parents, those engaged exclusively in fruit or vegetable packing between July 1 to November 1 and mercantile establishments in towns of less than two thousand inhabitants.[2]

Virginia recognized the principle of a shorter hour day for child workers in 1920 when a law was passed reducing the maximum hour day from ten to eight hours. The work week of six days was not changed.[3] This law also applied to only those under sixteen years of age.[4] Night work between the hours of 9 p.m. and 7 a.m. was forbidden this group.[5]

Realizing that the eight-hour day, six-day week permitted excessive weekly hours for children, the legislature limited the work week to 44 hours in 1922 and made it applicable to all labor except that in gardens, on farms or in orchards. The night-hours provision of the previous law was changed to the hours between 6 p.m. and 7 a.m.[6]

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[1] Acts of Assembly, Virginia, 1914, 671-2.

[2] Acts of Assembly, Virginia, 1914, 671-2.

[3] Acts of Assembly, Virginia, 1920, 840-1.

[4] Acts of Assembly, Virginia, 1920, 840-1.

[5] Acts of Assembly, Virginia, 1914, 671-2, 1920, 840-1.

[6] Acts of Assembly, Virginia, 1922, 855.

Laws affecting child labor in Virginia since 1922 have not changed the maximum working period of this law. They have rather strengthened the employment certificate provision in an effort to insure enforcement. The minimum age for children entering employment in factories and stores in Virginia still stands at fourteen years as provided in 1889.[1] The length of the working day is eight hours, the work week forty-four hours,[2] and is applicable to all under sixteen engaged in all occupations except the domestic employments stated. The night work prohibitions likewise cover all such employments for those under sixteen, between the hours of 6 p.m. and 7 a.m.

The effectiveness of child labor laws depends very largely on the machinery provided for enforcement and upon the interest of the enforcement officials. Our experience has shown that the employment certificate is the keystone of our child labor law enforcement. These certificates are required of all minors up to sixteen years of age, in all occupations. It is necessary that they be issued for work with a stated employer, that on termination of employment the certificate be returned to the issuing officer so designated.[3] The certificate is issued only upon satisfactory documentary proof as to the

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[1] Acts of Assembly, Virginia, 1889-90, 160.

[2] Acts of Assembly, Virginia, 1922, 866.

[3] Acts of Assembly, Virginia, 1936, 773.

minor's age. The certificate is evidence of compliance with the legal requirements for employment, such as age, physical fitness, and protects the employer from unintentional violation of the law.[1] The certificate of physical fitness is issued by a physician and is necessary before an employment certificate may be secured. This certifying system lends itself particularly to keeping track of children employed during school hours since the certifying officers and school attendance officers are both interested in the enforcement of the school attendance law. Virginia's first school attendance law was passed in 1908.[2] This law required the attendance of children between the ages of eight and twelve for a period of twelve weeks, six of which were to be consecutive. The district school trustees could excuse those weak in body or mind, those able to read and write, or those who were attending a private school or lived more than two miles from school. This law was made to apply in any school district by submitting the question to the qualified voters of the district at a general or special election held for that purpose.[3]

An Act of 1928 superceded the original law of 1908.[4] This law required the regular attendance of all children who have reached the

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[1] Acts of Assembly, Virginia, 1936, 774.

[2] Acts of Assembly, Virginia, 1908, 83.

[3] Acts of Assembly, Virginia, 1908, 83

[4] Acts of Assembly, Virginia, 1928, 1214.

seventh birthday and have not passed the fifteenth. Private school attendance under competent instructors is accepted. The period of compulsory attendance begins with the opening date of school and continues with the close of the school year. Blind and deaf children within the ages specified are required to attend some school for the blind. The only exceptions were:

(1) Those mentally or physically incapacitated,

(2) Those suffering from contagious diseases during the existence of the disease,

(3) Those living more than two miles from school or bus route,

(4) Those who have completed the elementary course of study prescribed by the State Board of Education.[1]

An amendment in 1934, changed the exemption relating to the distance between the child's home and the school or the bus route from two to one and one-half miles.[2] Another amendment in 1936 exempted those who had completed the course of study prescribed by the school attended. This amendment also gave the school boards the privilege of fixing the attendance ages at eight to sixteen years. This, however, can be done only after proper notification has been given to the people of the school division.[3]

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[1] Acts of Assembly, Virginia, 1928, 1214.

[2] Acts of Assembly, Virginia, 1934, 841.

[3] Acts of Assembly, Virginia, 1936, 497.

The motive of the law is excellent, yet it appears that the law in most sections of the state is dead. The failure on the part of the enforcement officers has rendered it thus. The passage of a law requiring each county to have an active truent officer, separate from its division superintendent, would, no doubt, improve the existing conditions.

Massachusetts was the pioneer state in enacting effective hour legislation for women. After more than forty years of almost continuous agitation by the working men and women of the state, they were rewarded by the passage of a sixty-hour-week law in 1874, applicable to manufacturing establishments.[1] Agitation for a ten-hour law began in the early thirties,[2] becoming a political issue in 1848, and continued until its final passage in 1879.[3]

Virginia's first attempt to enact such legislation came in 1890 with the passage of a similar ten-hour law covering manufacturing establishments. This law voided all previous contracts which had been made for a longer period of time. No enforcement provision was established other than to make the violator guilty of a misdemeanor and subject to a fine not in excess of twenty dollars.[4]

This law was amended in 1912, when the ten-hour-a-day was extended to include not only factories and manufacturing establishments but work shops and mercantile establishments. Those whose full-time employment was that of a bookkeeper, stenographer or office assistant as well as

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[1] United States Department of Labor, History of Labor Legislation for Women in Three States, 1952, 18.

[2] Ibid., 1932, 18.

[3] Ibid., 1932, 18.

[4] Acts of Assembly, Virginia, 1889-90, 150.

those engaged in fruit or vegetable packing during the short period, July first to November first, were exempted from the coverage of this act. Likewise Saturday work in these industries was not covered.[1]

In 1914, this hour law was further amended when laundries were included under coverage of the law and those canning and fish-packing industries located in country sections were added to the list of excluded industries.

Further revision in 1918 retained all the provisions of the 1914 law except that dealing with the exemptions for seasonal industries. This was changed to apply at all times to all factories engaged exclusively in packing fruit and vegetables.[2] The Commissioner of Labor was authorized to grant permits to leaf tobacco prisories in towns and cities of less than thirty thousand population to employ women for more than ten hours a day when it appeared that such was necessary to provide for an emergency and where the additional time was entirely voluntary with the employees. These permits stated the time and conditions of work and specified pay at a rate of time-and-a-half for such overtime. This provision was effective only until February 1, 1920.[3]

Amendment to this law in 1926 added restaurants to the industries covered by the hour regulation. It required for the first time the posting of the law and the hour schedule.[4] The penalty clause of the

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[1] Acts of Assembly, Virginia, 1912, 557.

[2] Acts of Assembly, Virginia, 1918, 363.

[3] Acts of Assembly, Virginia, 1918, 756.

[4] Acts of Assembly, Virginia, 1926, 895.

1930 law was revised and penalty for violation on the first offense carried a maximum fine of twenty-five dollars; subsequent offenses fifty dollars. All other provisions of the earlier laws were retained until 1932 when the legal maximum was placed at sixty hours a week. The industries covered and exempted were unchanged.[1] A bill calling for an eight-hour day and fifty-hour week passed the House of the Virginia General Assembly in 1936 but was killed in the Senate. It was introduced again in 1936 and after much prolonged debate legislation was passed reducing the hours of employment of women to 48 hours a week and nine hours a day. This law voided all contracts which had been made for a longer period of time.

The exemptions, although similar to those of the previous law may be enumerated as follows:

1. Those females whose full time employment was as bookkeepers, stenographers, cashiers or office assistants, buyers, managers or assistant managers and office executives were not affected by this hour law.

2. Those engaged exclusively in canning, processing or fruit or vegetable packing during the fruit and vegetable season were not affected.

3. Those engaged in the handling or redrying of tobacco, or in the shelling or cleaning of peanuts, shucking or packing oysters during the respective seasons, not in excess of ninety days during any one year, and provided employment does not exceed ten hours a day in any twenty-four-hour day.

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[1] Acts of Assembly, Virginia, 1932, 828.

4. Women employed in mercantile establishments located in towns of less than 2,000 or in rural districts were also exempted.

5. The hours of women employed in florist shops or green houses can not exceed 10 hours a day for the three days preceding and on February 14, December 25, Easter Sunday and Mother's Day.

Feeling that the female employees should be informed of the exactness of the law, employers of all industries affected are required to post in their shops, in a conspicuous place and in each room where women are employed, a copy of this act as well as a daily schedule of the activities of each female worker.[1]

To insure the enforcement of this act the penalty clause of the 1926 law was retained,[2] namely, for the first offence a fine of twenty-five dollars, and subsequent fines of fifty dollars. The responsibility for enforcement is with the Commissioner of Labor.

When the question of an eight-hour law was brought up in the legislature, many of the organized women were in opposition to this law as proposed. This opposition was not as many had thought against an eight-hour law for women. They were in favor of it, but they opposed a law that applied to women only. This opposition amounts to opposing a law for both men and women, since there is little chance for legislation covering both at the present time. The women who were directly affected by the law favored it. They were not influenced by the claims of the organized business and professional groups, "that men and boys would replace the women in industry." They were informed that such replacements do not occur on a large scale, and that the law would be far more

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[1] Acts of Assembly, Virginia, 1938, 770.

[2] Acts of Assembly, Virginia, 1926, 895, 1938, 770.

beneficial than harmful to them.

The new law is in need of certain clarifications. For instance, there is the question as to whether the courts will term "assistants managers" and "buyers" to mean women who are in responsible executive positions as was the ultimate intent of the legislature. These terms may be interpreted to permit the exemption of some women that should not be exempted.

This new law marks a great progressive step, over the law which it replaces. It substitutes a nine-hour day forty-eight-hour week for a ten-hour day and sixty-hour week (70-hour in restaurants) and these apply to a great mass of women workers over the State of Virginia. Those women who were employed in the handling and redrying of tobacco, shellers and cleaners of peanuts, and packers of oysters could formerly work ten hours a day the year round, whereas now, they can be permitted to work that long for the ninety-day season only.

Weaknesses should and probably will be eliminated by judicial interpretation and the amending process; however, as the law now stands it has been described by the United States Department of Labor as the best of its sort on the statute books of any southern state.[1]

In contrast with the recent development of hour regulation for women in Virginia is the fragmentary condition of legislation affecting the working hours of men. Neglect here is said to be due to the courts in that they have been reflecting public opinion, which has been slow in seeing the need of restricting the hours of men in employment.[2]

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[1] Editorial, Richmond Times Dispatch, June 30, 1938.

[2] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 116.

Since the invalidation of the National Industrial Recovery Act in 1933 there has been a great breaking away from the standards of the codes in almost every respect. Wages have been lowered and hours increased; some plants have violated the Sunday Law in order to avoid adding to the working force.[1]

A number of new plants have come to Virginia to escape the higher standards imposed by the state from which they came and thereby gain a competitive advantage by working their employees long hours at low pay.[2] Industries of this type are social and economic liabilities. To remedy these conditions, Virginia must protect its workers as well as those employers who voluntarily maintain good wage and hour conditions, by the passage of a minimum wage and hour law for male employees. No legislation of this type has ever gained any consideration before a Virginia legislative body.

2. Rest Periods

The most common of legal requirements for daily rest periods is found in laws regulating the employment of women. Many states have laws which specify the time women should have for the noon meal.[3] The Virginia law does not have any such provision. It rather limits the daily hours of her employment and requires that suitable seats be provided for her to use at such times and to such extent as is necessary for the

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[1] Department of Labor and Industry, Virginia, Annual Report, 1933.

[2] A Brief Summary of the Work of the Several Departments of Government, Senate Document 1A, 1938, 42.

[3] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 141.

preservation of her health. It has been pointed out that many employers have voluntarily granted rest periods of fifteen minutes in the forenoon and afternoon to their employees.[1] Such action on the part of an employer is very commendable and, no doubt, adds much to both the physical welfare and the efficiency of the worker.[2] As important as this may seem, legal regulations to this effect do not exist in America.[3]

Night work legislation in Virginia, applies only to children. There is no regulation of the work of men and women in this respect. It is a conceded fact that serious physical and moral hazards surround the work of women at night. Many single, as well as married women, must perform before and after their jobs, the home and family duties to which the average housewife devotes most of her day. These domestic duties make greater demands on women than on men. Often this outside work is at night; the home duties take most of the day, giving them little time for rest. Recovery from the fatigue resulting from such a schedule is obtained mainly through rest and sleep. For the sake of the race, rest periods are essential for women. The safeguarding of women in industry is necessary not because of a striking difference in physical strength between the sexes but because of the need to conserve their energies to enable them to bear healthy children. Whatever undermines women's strength and energy strikes a blow at the welfare and progress of the nation.[4]

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[1] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 141

[2] Ibid., 1936, 141.

[3] Ibid., 1936, 141.

[4] Woman's Bureau, Bulletin, August 1937, 5. United States Department of Labor, Washington, D. C.

Children are protected from seven-day labor through the provisions of those maximum hour laws which limit work to a six-day-week of forty-four hours.[1] Women are protected only by the nine-hour-day, forty-eight hour a week limitations.[2] Every Saturday after twelve o'clock is considered a half holiday with regard to the transaction of all business in the State of Virginia, except as to maturity or the presentation for acceptance or payment of negotiable instruments.[3] This, of course, applies to men as well as women.

The only additional rest period which comes to men is that afforded to all laborers by Sundays and holidays. The Sunday law in Virginia, as in other states, is a descendant of the old Puritan "blue laws" and attempts to forbid Sunday work primarily for religious motives.[4] This law forbids a person to labor, or employ his servants in labor unless it is household work or work of charity or necessity. Jews are excepted, provided they do not require others, not in their belief, to do business or secular work on Sunday.[5] The word "Sunday" as used in the Virginia Law embraces only that portion of the day between sunrise and sunset. Trains in transit having started prior to twelve o'clock on Saturday night may run until nine o'clock the following Sunday morning in order

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[1] Acts of Assembly, Virginia, 1922, 865.

[2] Acts of Assembly, Virginia, 1938, 770.

[3] Acts of Assembly, Virginia, 1918, 121.

[4] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 149.

[5] Acts of Assembly, Virginia, 1904, 53.

to reach the shops of the company.[1] The Virginia law undertakes to forbid the loading and unloading of freight trains and steamboat cargoes on Sunday. Only those trains and steamboats used exclusively for the transportation of the United States mail, passenger, livestock or goods of a perishable nature which would be impaired in value by one day's delay, are allowed to be loaded, unloaded, or transported on Sunday.[2] The law cannot interfere with those agencies engaged exclusively in interstate commerce which passes through the state without stopping to load or unload freight. Neither does the law interfere with trains or ships going to the relief of others, possibly because of accident. In the event it becomes necessary to meet an emergency or to save life or property the State Corporation Commission has the power to authorize the running, loading or unloading necessary to meet the existing emergency.[3]

The average salaried worker receives an annual vacation with pay each year of two weeks or more. Ordinarily no such provision is made for wage earners. Laws in this country requiring annual vacations, cover only public employment.[4] It is uniform throughout all employments in Virginia that the following days are considered as public holidays: Lee-Jackson day, the twenty-second day of February, the thirtieth day of May, the third day of June, the fourth day of July, the first Monday in September, Election day, Armistice day, and Christmas day.

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[1] Acts of Assembly, Virginia, 1904, 66.

[2] Acts of Assembly, Virginia, 1904, 68.

[3] Acts of Assembly, Virginia, 1904, 68.

[4] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 186.

The law provides that whenever any of these days fall on Sunday the day following is to be observed as the day of thanksgiving, fasting or prayer[1] as the case may be.

3. Wage Regulation

Laws in Virginia have not ventured far in interfering directly by setting the amount of wages an employer shall pay his employee. Regardless of the amount, the frequency of payment is of deep concern to the laborer. If he is to wait for his wages a long time, the greater is his need for credit, the higher his living cost and the lower will be his real wages.[2] To safeguard laborers against such, the Virginia law requires that all employees receive wages "at least once each month".[3] The law today stands as it read originally having been changed in 1912[4] to "twice a month" and again in 1918, back to the original reading. These wages must be paid in lawful money of the United States. Orders are not issued in payment of wages unless they are redeemable in lawful money of the United States, bearing interest at the legal rate, redeemable by and made payable to the employee.[5] Tokens or non-transferable coupons can be used only when they are requested by the employee. Even then they must be accompanied by a plainly written promise that

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[1] Acts of Assembly, Virginia, 1918, 121.

[2] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 330.

[3] Acts of Assembly, Virginia, 1887, 497.

[4] Acts of Assembly, Virginia, 1912, 198.

[5] Acts of Assembly, Virginia, 1887, 497.

they will be paid in United States money when surrendered by the holder.[1]

Employees are protected also from discrimination by employers who would sell them merchandise at a greater percentage of profit than to others in their employment.[2]

The Virginia Law undertakes to safeguard wage earners against any legal action which may financially cripple him and his family. This protection was afforded by the passage of the "Homestead Exemption Law" in 1918,[3] and the "Poor Debtor's Law" of 1872.[4]

Householders in Virginia are entitled to hold exempt from levy, garnishment, or sale, real and personal property to the value of $2,000. This exemption does not extend to the execution of orders issued for the purchase price of the said property, to lawful claims for taxes, rent, or services rendered by a laboring person. Laborers in this state who are householders or heads of families are afforded this protection.

The low wages paid in this state have caused our laboring class, in many instances, to become heavily involved financially. This problem brought legislative action in 1872, when the laboring man was given the legal right to hold at least fifty dollars a month free from distress, levy or garnishment.[5] An amendment in 1938 exempted 75% of his monthly

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[1] Acts of Assembly, Virginia, 1918, 620.

[2] Acts of Assembly, Virginia, 1887, 897.

[3] Acts of Assembly, Virginia, 1918, 487.

[4] Acts of Assembly, Virginia, 1872, 177.

[5] Acts of Assembly, Virginia, 1872, 177.

wage but in no case less than $50, a month nor more than $75, applicable to laborers only.[1] This is in addition to the real and personal property exemption which the law entitles him to hold free from lein. It is unlawful for any person to assign a claim for debt held by him against a resident of this state who is a laboring man.[2] Claims made by the laborer, giving a lein on property which is exempt from levy, except those given to secure a loan made necessary for the purchase of said property, are void.[3]

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[1] Acts of Assembly, Virginia, 1938, 674.

[2] Acts of Assembly, Virginia, 1918, 467.

[3] Acts of Assembly, Virginia, 1938, 218.

Chapter III

SAFETY AND HEALTH

1. Prohibition

a. Children

Exclusion of children from industrial pursuits has been carried further than with any other group of wage earners. This is possibly due to the theory that the child, being the special ward of the state, is most in need of protective measures to safeguard his life, limb, health, and morals.[1]

The first child labor law passed in Virginia in 1885 regulated the so-called dangerous occupations.[2] The minimum age of fourteen years was fixed for those engaged in work that might be injurious to their health or morals, to life or limb. The difficulty in classifying occupations successfully as to their relative dangers, led Virginia as well as other states, to enact legislation as the need occurred, excluding them from or placing age limitations upon certain employments.

This type of legislation began in 1902, when children under twelve were forbidden to work in mines or factories at any time. Night work

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[1] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 169.

[2] National Child Labor Committee, New York City, Bulletin, 1921, 80. "The Historical Development of Child-Labor Legislation in the United States."

was forbidden those under fourteen.[1] In 1912, the twelve-year minimum for employment in mines was raised to fourteen.[2] These prohibitions were extended in 1914 to include employment in laundries, bakeries, brick and lumber yards.[3] Legislation in 1918, raised the age minimum for mine work from fourteen to sixteen.[4] The Assembly in 1922 added tunnels, excavation work, and brick or lumber yards to the list of industries prohibited to children under sixteen years of age. An amendment in 1936 increased this age to eighteen.[5] This act also forbade them from operating or assisting in the operation of dangerous machinery as well from working in any capacity where dangerous or poisonous chemicals were used, or alcoholic goods except where they were incidental to the main business.[6] A minimum age of sixteen for boys and eighteen for girls was fixed for those desiring work in tobacco stores, theatres, pool rooms, hotels, steam laundries and elevators. The former law passed in 1918 only included laundries, brick and lumber yards and covered all under fourteen years of age.[7]

The street trades were first regulated in 1914, when legislation was enacted requiring a minimum age of ten years for all boys and sixteen

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[1] Acts of Assembly, Virginia, 1902, 1903.

[2] Acts of Assembly, Virginia, 1912, 248.

[3] Acts of Assembly, Virginia, 1914, 671.

[4] Acts of Assembly, Virginia, 1918, 346.

[5] Acts of Assembly, Virginia, 1936, 773.

[6] Acts of Assembly, Virginia, 1922, 855.

[7] Acts of Assembly, Virginia, 1918, 346.

for all girls engaged in selling papers in public places of cities with less than 5,000 population. The messenger service minimum age was fixed at fourteen and night work prohibited for any under the age of eighteen.[1] This minimum of fourteen was increased to eighteen in 1918 and night work was prohibited to any under twenty-one.[2] Those engaged in fruit-packing during that short season of four months were exempted from this coverage. Serving as messengers for telegraph companies and distributors of goods was prohibited to boys under fourteen and girls under twenty-one at any time by an Act of 1922.[3] Employment in these services between the hours of 10 p.m. and 6 a.m. was allowed to males eighteen and females twenty-one years of age or older.[4] Boys under fourteen and girls under eighteen were denied the privilege of working at the street trades except boys between the age of twelve and sixteen engaging in only those occupations permitted by the law when school was not in session. The certification of physical fitness is very beneficial in that it excludes those unfit to work and requires correction of defects before work begins.[5]

b. Women

It should be pointed out regarding women that labor legislation may be divided broadly into two parts: (1) laws definitely prohibiting

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[1] Acts of Assembly, Virginia, 1914, 671.

[2] Acts of Assembly, Virginia, 1918, 346.

[3] Acts of Assembly, Virginia, 1922, 858.

[4] Acts of Assembly, Virginia, 1922, 858.

[5] Virginia Child Labor Law, Bulletin, 1936, 5, Division of Purchase and Printing.

employment of women; (2) laws regulating their employment. The latter laws may become prohibitory in their actual effects. The effect of laws prohibiting employment in certain occupations is very different from those that are regulatory. Prohibitory laws have really one effect - the elimination of women from the occupations covered. Virginia has only one such law, passed in 1912, and it excludes women from employment in mines.[1]

To insure the enforcement of this act, for one who knowingly violated this prohibition by employing a woman for this work the legislature set a fine not in excess of $500, together with a jail sentence not in excess of ninety days.[2]

2. Regulation

Furnishing a reasonably safe place in which to work is plainly a duty of employers and was recognized as such by the employer's liability statutes. Some industrial managers are less energetic in bearing this social responsibility than others, hence standards enforceable by law are necessary to afford workers the proper protection.[3] The Virginia code deals mainly with factories and workshops.

a. Machine Guards

The Virginia Law provides that all mechanisms used in the transmission of power as well as all active parts of machines must be securely

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[1] Acts of Assembly, Virginia, 1912, 178.

[2] Acts of Assembly, Virginia, 1912, 178.

[3] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 197.

guarded.[1] These guards are not to be moved when the machine is in operation. In the event any part of the machine becomes faulty and dangerous it must be made safe within thirty days.[2]

In case of accident it is important that the operator be able to stop the machine at once. It is required, therefore, that shafting be fitted with tight and loose pulleys and that belt shifters be supplied for shifting the belt quickly from one to another.[3]

b. Lighting, Heating, and Ventilation

Proper lighting affects both the health and comfort of workmen and his liability to accident. Less attention is paid to this phase of industrial safety than to any other of similar importance.[4] In Virginia the only provision of this sort requires that work rooms and halls be properly lighted. In all first-class cities, proper lights shall be kept burning in all public hall-ways near the stairs upon the entrance floor and upon the other floors on every work day.[5] This provision is in part nullified by the exception "at times when the influx of natural light shall make artificial light unnecessary."[6]

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[1] Acts of Assembly, Virginia, 1914, 25.

[2] Acts of Assembly, Virginia, 1914, 25.

[3] Acts of Assembly, Virginia, 1922, 607.

[4] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 200.

[5] Acts of Assembly, Virginia, 1922, 607.

[6] Acts of Assembly, Virginia, 1922, 607.

Recognition of the importance of ventilation is becoming more widespread. Dusts and fumes from industrial plants are the most serious of health hazards. Hence, important legislation providing for proper ventilation has been passed. The first such law in Virginia was enacted in 1908 when agents of peanut cleaning establishments and cotton factories were required to furnish their employees with suitable sponge shields to protect them against inhaling the dust created.[1] New processes have nullified these provisions.

More important is the legislation passed the same year requiring proper and sufficient means of ventilation in foundries and moulding shops. The work room in these shops must be ventilated in such a manner as to disperse and render harmless any steam, excessive heat, gases, vapors or other impurities which are generated in the course of employment.[2] Another important phase of this legislation which was passed in 1918, provided for the retention and removal of dusts and fumes at the point of production. This is accomplished by specially constructed hoods, hoppers, exhausts and fans.[3]

c. Seats, Toilets, and Wash Rooms

In safety and health legislation, as well as in legislation governing hours, it is noticeable that women are singled out for special

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[1] Acts of Assembly, Virginia, 1908, 359.

[2] Acts of Assembly, Virginia, 1908, 339.

[3] Acts of Assembly, Virginia, 1918, 440.

protection. This is no doubt due to the fact that the possibilities of injury from insanitary conditions are more apparent with them.[1] Striking among these laws are those which afford special protection and convenience in factories and mercantile establishments. As far back as 1898, Virginia required suitable seats, rests, or stools for her female employees.[2] In 1910, an amendment to this law provided one seat for every three women employed. These were to be conveniently located and their use allowed at such times and to such extent as might be necessary for the preservation of health.[3] In establishments where the nature of the work requires the women to stand it is deemed sufficient compliance with the law if suitable rest rooms for use at reasonable times are provided.[4] Fruit and vegetable canneries are the only exception to this seating law.

Virginia likewise requires sanitary and separate toilets for women workers in addition to those for men. This law of 1910 applies to every establishment in which five or more persons are employed, and every factory, shop, or store in which women are employed, or in which two or more children under eighteen years of age are employed.[5] The intent of this law was to provide a sufficient number of toilets reasonably accessible

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[1] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 203.

[2] Acts of Assembly, Virginia, 1898, 53.

[3] Acts of Assembly, Virginia, 1910, 139.

[4] Acts of Assembly, Virginia, 1922, 607.

[5] Acts of Assembly, Virginia, 1910, 19.

to all employees and safeguard them against effluvia arising from drain toilets.

Both sexes were not to use the same toilets. This law was changed in 1912 and made applicable to establishments in which five or more were employed, or in which one or more males worked with one or more females.[1] The only exception under this law referred to buildings which were used exclusively for offices. Here the toilets were to be separate and in some adjoining nearby building.[2] Further amendment in 1922, required that the toilets have separate entrances and be separated by partitions extending from the floor to the ceiling. No person is allowed to use the toilet of the opposite sex.[3] Owners of establishments not so constructed were required to make conforming changes by July 1, 1923. The expense of this improvement was to be borne by the owner of the plant or building.

In addition to toilets, adequate wash rooms are to be provided for the employees. This law applies to foundries and moulding shops. Such wash rooms and toilets must have at least one wash bowl and one commode for every six moulders. These are to be connected with the shop and shielded from the weather.[4]

An effort to check the spread of diseases was made in 1916, when

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[1] Acts of Assembly, Virginia, 1912, 105.

[2] Acts of Assembly, Virginia, 1912, 103.

[3] Acts of Assembly, Virginia, 1922, 607.

[4] Acts of Assembly, Virginia, 1916, 870.

common drinking cups in public places were forbidden.[1] Towels for common use were also prohibited in 1916.[2]

d. Fire-escapes

Another phase of protective legislation in Virginia is that relating to fire-escapes and handrails around stairways. Provision requiring handrails around all stairways in factories, shops and mercantile establishments was made in 1914.[3] Provision for adequate fire-escapes to all buildings where as many as fifteen persons were employed, lodged, or entertained, constituted the law of 1916.[4] An amendment of 1930 required that adequate fire-escapes be provided for all buildings where as many as ten persons were regularly employed, entertained, or lodged.[5] This amendment extended its provision to cover all school buildings having its auditorium above the first floor level. Formerly there was no distinction between school buildings, hotels, and shops.[6] An inspection of these buildings is required at least semi-annually and is made by a committee composed of the city mayor and the heads of the fire and police departments. Council members are permitted to serve in the absence of

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[1] Acts of Assembly, Virginia, 1918, 486.

[2] Acts of Assembly, Virginia, 1916, 498.

[3] Acts of Assembly, Virginia, 1914, 25.

[4] Acts of Assembly, Virginia, 1916, 868.

[5] Acts of Assembly, Virginia, 1930, 947.

[6] Acts of Assembly, Virginia, 1930, 947.

proper officials.

c. Mines

The Bureau of Mines created as a separate branch of the Department of Labor and Industry and subject to its control supervises the extention and enforcement of all laws enacted for the safety of those employed in coal mines. The bureau is in charge of a State Mine Inspector, who has a thorough knowledge of mine explosives, gases and dusts and is capable of seeing that mines are well ventilated.[1] This inspector visits the mine once each six months and makes a personal examination before posting his certificate of inspection. Each mine in Virginia must provide ample means of ventilation, affording no less than 100 cubic feet of air per minute for each worker. In all mines generating fire damp and where it is believed that gas will accumulate, the minimum ventilation is 150 cubic feet of air per minute for every person. This is to circulate so that is will dilute and carry off the dangerous gases generated.[2] The working places are to have break-throughs for air or brattices shall be used to ventilate the faces. Not more than 60 men can work in the same air current in mines in which dangerous gases have been detected. If such gases are not present, eighty men may work in the same air current.[3]

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[1] Acts of Assembly, Virginia, 1924, 759.

[2] Acts of Assembly, Virginia, 1924, 759.

[3] Acts of Assembly, Virginia, 1924, 759.

Mines operating must have fans in constant use if gases are being generated in dangerous quantities.[1] When open lamps are permitted in the mines, only that oil which is free from the evolution of smoke may be used.[2] Every employee is informed of the dangers which may be encountered, each is furnished with a locked safety lamp in charge of a person known as the fire boss. No other lamp or torch may be used except with written permission of the State Mine Inspector.[3]

Voltage on trolley wires leading to and from mines must be protected by some method approved by the State Mine Inspector. The electric power on these must not exceed three hundred volts.[4]

The State Law does not allow one to carry any larger quantities of explosives into a mine than is needed for one shift. All powder shall be carried into the mines in five-pound vessels. At least twenty minutes must elapse after each blast before work is resumed in a mine.[5]

The provisions of this act apply to all coal mines and other underground mines. No new undergrounds can be opened without first giving notice to the Bureau of Mines.[6]

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[1] Acts of Assembly, Virginia, 1924, 759.

[2] Acts of Assembly, Virginia, 1924, 759.

[3] Acts of Assembly, Virginia, 1924, 759.

[4] Acts of Assembly, Virginia, 1924, 759.

[5] Acts of Assembly, Virginia, 1924, 759.

[6] Acts of Assembly, Virginia, 1924, 759.

Chapter IV

SOCIAL INSURANCE

1. Employers' Liability

In the handicraft production of the middle ages there existed a close connection between the master and his servants. Limited means and lack of labor caused manufacturing in the guilds to be conducted on a small scale. The injuries to servants were few but when one occurred, the master cared for the injured.[1]

With the coming of machinery and large scale production, the number of employees increased, accidents became more numerous and the employee lost the personal attention and care of his employer. To recover damages he then had to resort to court proceedings and bring suit against his employer.[2]

It was a difficult matter for him to establish employers' liability because the employer was permitted to defend any such action at law upon any or all of the following grounds:

1. That the employee was negligent.
2. That the injury was caused by the negligence of a fellow-servant.
3. That the employee had assumed the risk of the injury.[3]

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[1] John R. Commons and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 228.

[2] Ibid.

[3] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 56.

These defenses were as property rights to the employer for it was by their use that the expense incurred by reason of accidents was carried by the employees.

With the enactment of the Virginia Workmen's Compensation Act these defenses were abrogated.[1] The opponents of this law have referred to it as "club" legislation, but the courts have upheld it as a valid exercise of legislative power for a public good.[2]

2. Workmen's Compensation

a. The Problem

The Workmen's Compensation Act is essentially a compromise between the employer and the employee for settling differences arising out of personal injuries. It is a compromise greatly in favor of the employee,[3] it may be said to be insurance against occupational accidents.

The problem underlying employers' liability laws was who should bear the economic losses which are sustained by workers through industrial accidents. These losses result from deaths and injuries occurring in the regular course of employment and should be considered a part of the cost of production. In the first instance, the Compensation Act places this upon the employer to be shifted to the consumer just as any other cost incurred in the production of goods.[4] The principle of the Workmen's

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[1] Acts of Assembly, Virginia, 1918, 637.

[2] John R. Commons and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 240.

[3] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, Humphreys v. Boxley Brothers, 146 Virginia 91.

[4] John R. Commons and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 227.

Compensation Law in Virginia is to provide compensation for injured employees during disability due to industrial accident; or, for their dependents in case of death, as well as, to prevent the recurrence of such accidents.[1]

b. Employments Covered

Under the Workmen's Compensation Act, the term "employers" includes all individuals or their representatives who use the services of another for pay. This includes the state and the coverage protects all of its employees, including officers and members of the National Guard, except those who are elected by the people or legislature or appointed by the governor.

Municipal and political subdivisions of the state are included and their employees protected unless they are elected by the people or perhaps appointed for a given period of time by a legislative body. Policemen and firemen in cities of more than one hundred and seventy inhabitants are not protected under the Compensation Act.[2]

This Act is not to be interpreted as including employees engaged in intra-state commerce with a motive power of steam, nor to farm or domestic servants. Firms or corporations having less than eleven employees, regularly employed in their service, are not bound by the Act unless they voluntarily elect to operate under it.[3]

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[1] Virginia Senate Document No. 1-A, 1938, 48.

[2] Acts of Assembly, Virginia, 1922, 742.

[3] Acts of Assembly, Virginia, 1938, 336.

c. Basis for Compensation

Recovery in all classes of disability under the Compensation Act is computed on a basis of the average weekly wages of the employee. These may be interpreted to mean the average weekly earnings of the injured employee at the time of the accident. If the employee has been in the services of his employer for fifty-two weeks prior to the accident, this average would be found by dividing his total salary for the fifty-two weeks by fifty-two. Where employment prior to the injury extended over a period of less than fifty-two weeks, it is permissable to divide the earnings during that time by the number of weeks or parts of weeks during which the employee earned wages. In many instances, injury occurs to those who have been in the services of the employer for only a short time. It is impractical, in such cases, to compute the average weekly wages as is stated above. In such cases the legislature provided that special regard should be had to the average weekly amounts received during the fifty-two weeks previous to the injury from employers of the same grade and character and employed in the same business and under similar conditions.[1]

It is generally conceded that this means of ascertaining the average weekly wages is fair and just to both the employer and employee, but where, for some exceptional reason, it proves to be unfair or unjust to either, provision is made whereby some other method of computation can

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[1] Acts of Assembly, Virginia, 1918, 637.

be used, which will most nearly approximate the amount that the injured employee would be earning had it not been for the injury.[1] In cases where it becomes necessary for the employee to lose seven or more consecutive days from his work, those are not to be considered in arriving at his average weekly wage.[2] Any allowances made to him in the form of wages are considered a part of his earnings and are used in computing his average weekly wages.[3]

d. Injuries Compensated

Before damages can be awarded under the Virginia Law, the question of fact must be established that the injury arose out of and in the course of employment. The burden of proof rests with the claimant. A failure to sustain his claim bars compensation.[4]

An injury may be said to arise in the course of employment when it takes place:

1. "Within the period of employment"
2. "At a place where the employee may reasonably be," and
3. "While he is fulfilling the duties of the employment or doing something incidental to it"

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[1] Acts of Assembly, Virginia, 1918, 637.

[2] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 18, Oliver v. Va. I.C.& C.Co., 11 O.I.C. 34.

[3] Acts of Assembly, Virginia, 1918, 637.

[4] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 18; Thompson v. Waugh, 4 O.I.C. 246.

In considering whether the injury arose out of employment, two considerations are involved:

> "It must have occurred in the course of employment or incident to it, or to the conditions under which it is to be performed."[1]

Diseases are not allowed under the Virginia Compensation Law unless they naturally and unavoidably result from accident.[2]

(1) Rates and Period for Compensation

The following cases, with incapacity periods indicated, are compensated at the rate of 55 per cent of the average weekly wage:

1. For the loss of a thumb, sixty successive weeks
2. For the loss of a first finger, thirty-five successive weeks
3. For the loss of a second finger, thirty successive weeks
4. For the loss of a third finger, twenty successive weeks
5. For the loss of a fourth finger, fifteen successive weeks
6. For the loss of the first phalange of any finger or thumb, the compensation shall be for one-half of the time specified in the individual case.
7. The loss of more than one phalange is equivalent to the loss of the entire finger or thumb, provided that the amount received does not exceed that which is allowed for

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[1] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 18; Stokonis v. United, Connecticut, 148 Atl. 334.

[2] Acts of Assembly, Virginia, 1918, 638.

the loss of a hand.

8. For the loss of a great toe, thirty successive weeks.

9. For the loss of any toe other than the great toe, ten successive weeks.

10. The loss of the first phalange of any toe is equivalent to the loss of one-half of that toe; compensation is one-half of the time specified in that particular case.

11. The loss of more than one phalange of any toe is equivalent to loss of the entire toe.

12. For the loss of a hand, one hundred and fifty successive weeks.

13. For the loss of an arm, two hundred successive weeks.

14. For the loss of a foot, one hundred and twenty-five successive weeks.

15. For the loss of a leg, one hundred and seventy-five successive weeks.

16. For the permanent and total loss of the vision of an eye, one hundred successive weeks.

17. For the permanent partial loss of the vision of an eye, the percentage of one hundred weeks equivalent to the percentage of the vision loss determines the compensation.

18. For the permanent and total loss of the hearing of an ear, fifty successive weeks.

19. For the permanent partial loss of the hearing of an ear, the percentage of fifty weeks equivalent to the percentage

of the hearing loss determines compensation.[1]

20. For marked disfigurement of the head or face resulting from an injury which is not included above and which impairs the future usefulness of the employee, sixty successive weeks.[2] This disfigurement must be such as will enable the injured to the full sixty weeks benefits, because the Virginia Law gives no authority for apportioning the amount of facial disfigurement.[3]

The Workmen's Compensation Act originally allowed, in case of each disability, only 50 per cent of the average weekly wages.[4] This was increased to 55 per cent by the legislature in 1930,[5] and has remained at that figure since that time.

The law of 1918 made no provision covering the loss of use of a member.[6] By amendment in 1920, a law was enacted making such equivalent to the loss of that member.[7] For permanent partial loss compensation was to be proportionally awarded.[8]

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[1] Acts of Assembly, Virginia, 1932, 80.

[2] Acts of Assembly, Virginia, 1934, 41.

[3] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 85; Fleenor v. Mohawk Coal Co., 7 O.I.C. 475.

[4] Acts of Assembly, Virginia, 1918, 645.

[5] Acts of Assembly, Virginia, 1930, 57.

[6] Acts of Assembly, Virginia, 1918, 645.

[7] Acts of Assembly, Virginia, 1920, 258.

[8] Acts of Assembly, Virginia, 1920, 258.

The benefits provided are all subject to the maximum and minimum limitations.[1]

(2) Notice of Injury

The Virginia Law provides that the injured employee, or some one representing him, must give a written notice as soon as possible after the occurrence of an injury. This notice must state the time, place, nature, and cause of the accident, and possible extent of injury. The employee is expected to sign the notice of injury but, in case of fatality, it may be signed by any one of his dependents or any person in his behalf. Inaccuracy in the notice does not bar the employee from compensation. He does not receive free medical attention or any compensation prior to the giving of this notice to his employer, unless it can be shown that the employer or one of his representatives had knowledge of the accident and that failure to give a report of the accident was due to some physical or mental incapacity or possible deceit of a third party. The burden of proof here rests with the injured to prove to the satisfaction of the Industrial Commission of Virginia, that the reasons for such failure were adequate.[2] The Compensation Act absolutely forbids any recovery under its provisions unless a claim is filed with the Industrial Commission within one year after the accident. In case of death, it must be filed within one year thereafter.[3]

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[1] Acts of Assembly, Virginia, 1933 - 1934, 41.

[2] Acts of Assembly, Virginia, 1918, 642.

[3] Acts of Assembly, Virginia, 1918, 643.

c. Scale of Benefits

Indemnity has a two-fold purpose: the first of which is to restore the workmen's earning power so that he will not become a burden to society; and second, to provide support for his family during this period of treatment.[1]

(1) Medical Attention

Immediately following an accident the employer is required to furnish free medical attention to the injured employee for a period of sixty days.[2] Should such care be necessary for a longer period, the Industrial Commission may require the employer to continue this medical attention, but not more than one hundred and eighty days.[3] Refusal of the injured to accept the kind of medical attention which is being furnished, automatically bars him from further compensation. If, however, he can show the Commission that the care which he is receiving is inadequate, they may order a change in the medical service.[4]

The Compensation Act limits the charges of the physician to such as prevail in the same community for similar treatment and under the same conditions, as though the injured was settling for his own medical

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[1] John R. Commons and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 244.

[2] Acts of Assembly, Virginia, 1920, 267.

[3] Acts of Assembly, Virginia, 1930, 57.

[4] Acts of Assembly, Virginia, 1918, 634.

attention.[1] The employer may request an examination of the injured receiving compensation at any time during such compensation. It is the right of the employee if he so desires to have another physician present at his own expense. If the employee refuses the employer's request of submitting himself for an examination, compensation is suspended until he allows the examination. It is clearly understood that he shall receive no benefits during this suspension period.[2]

In the event of death the employer or the Industrial Commission has the right of requiring an autopsy, at the expense of the party requesting it.[3] If that right is refused or denied, compensation cannot be denied, for the statute contains no provision for making an autopsy further than mere grant of right.[4] There is no penalty or condition in case consent is refused.

(2) Waiting Period

It is customary, under compensation laws to provide no monetary benefits for a few days immediately following disability.[5] This lapse of time is known as the "waiting period," the object of which is to keep one from pretending inability to work with the hope of drawing benefits.[6]

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[1] Acts of Assembly, Virginia, 1918, 634.

[2] Acts of Assembly, Virginia, 1918, 644.

[3] Acts of Assembly, Virginia, 1918, 644.

[4] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932; Travelers Insurance Company v. Lay (Georgia) 146 S.E. 641.

[5] John R. Commons and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 246.

[6] Ibid., 240.

The "waiting period," under the Virginia Law is for the seven days following injury, except in the case of free medical attention. If incapacity to work because of injury extends beyond the seventh day, compensation begins with the eighth day. In the event it continues for more than six weeks, compensation is allowed from the first day of disability.[1] The original Act provided a waiting period of fifteen days which was not retroactive.[2]

In 1920 this period was reduced to ten days, with payment beginning on the eleventh day, becoming retroactive if the period extended more than six weeks.[3] This stood until 1930, when the waiting period was reduced to seven days.[4]

(3) Compensation for Total Disability

Total disability means total incapacity to work for life. Total and permanent disability under the Virginia Law is constituted by the loss of both hands, both arms, both legs, both feet, both eyes, or any two thereto resulting from injury in the same accident. The injured employee in such cases receives a compensation weekly for not more than five hundred successive weeks. This compensation is equal to 55 per cent of his average weekly wage, but he may not receive more than sixteen dollars a week and in no case less than six. Six thousand dollars is the maximum compensation

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[1] Acts of Assembly, Virginia, 1930, 57.

[2] Acts of Assembly, Virginia, 1918, 644.

[3] Acts of Assembly, Virginia, 1920, 257.

[4] Acts of Assembly, Virginia, 1930, 57.

which may be received by any injured employee.[1]

The original law provided compensation to the extent of four thousand dollars over a period of five hundred weeks. The employee could not receive more than ten dollars a week nor less than five.[2] The 1920 amendment increased the maximum coverage to forty-five hundred, and set twelve dollars a week as the maximum weekly benefits.[3] These were later changed in 1930 when the forty-five hundred dollar maximum was increased not to exceed fourteen dollars a week, with a minimum of six dollars.[4] The rate of compensation was increased at that time to 66 per cent of the average weekly wage.[5]

(4) Compensation for Partial Disability

Where disability because of injury renders the employee partially disabled, the employer must compensate the injured to the extent of 66 per cent of the difference between his average weekly salary before the injury and that which he is able to receive thereafter. The amount of compensation is not to be in excess of sixteen dollars a week and is not to extend over a period of more than three hundred weeks from the date of the injury.[6] If partial disability begins after a period of total

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[1] Acts of Assembly, Virginia, 1938, 337.

[2] Acts of Assembly, Virginia, 1918, 648.

[3] Acts of Assembly, Virginia, 1920, 260.

[4] Acts of Assembly, Virginia, 1930, 67.

[5] Acts of Assembly, Virginia, 1930, 67.

[6] Acts of Assembly, Virginia, 1938, 386.

disability for which total disability benefits were paid to the injured; this period of time is deducted from the maximum period for which compensation is allowed under partial disability.[1]

The 1918 law provided for compensation which was equal to 50 per cent of the difference between his average weekly wages before and that after injury; in 1930 this percentage was changed to 55.[2] The maximum weekly benefits were set at ten dollars and the period was not to exceed three hundred weeks.[3] These benefits were raised from ten dollars to twelve by an amendment in 1920[4] and again in 1930 to fourteen.[5]

(5) Compensation for Death

Where death of an employee results from accident within six years from the time of the accident the employer shall pay, subject to other provisions of the Act, to those who were wholly dependent upon the employee at the time of his accident, a weekly payment that is equivalent to 55 per cent of his average weekly wage. These payments may not be more than sixteen nor less than six dollars a week for a period of three hundred weeks. The total amount may not exceed five thousand dollars. In the event the employee leaves no dependents, the employer pays the burial

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[1] Acts of Assembly, Virginia, 1930, 366.

[2] Acts of Assembly, Virginia, 1930, 57.

[3] Acts of Assembly, Virginia, 1918, 649.

[4] Acts of Assembly, Virginia, 1920, 258.

[5] Acts of Assembly, Virginia, 1930, 57.

expenses of the deceased, but not in excess of one hundred and fifty dollars.[1]

Compensation for those who may be partially dependent upon the employee at the time of his death shall be in proportion to the weekly payments made for the benefit of those wholly dependent.[2] Compensation to dependents begins from the date of the last weekly payment made to the injured if he was receiving benefits at the time of his death. In the event there are no dependents who are citizens of and are residing in the United States or in the Dominion of Canada at the time of the accident, the amount of compensation shall not in any case exceed one thousand dollars.[3]

When Virginia first provided for death benefits in 1918, the maximum weekly payments were not to exceed ten dollars nor be less than five, though by 1920 this maximum was increased to twelve.[4] Burial expenses were not to exceed one hundred dollars.[5]

Death due to some cause other than that for which compensation is being paid at the time of fatality, entitles the dependents to any unpaid balance which is due the injured up to the time of his death.[6]

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[1] Acts of Assembly, Virginia, 1938, 387.

[2] Acts of Assembly, Virginia, 1938, 387.

[3] Acts of Assembly, Virginia, 1938, 387.

[4] Acts of Assembly, Virginia, 1920, 253.

[5] Acts of Assembly, Virginia, 1918, 649.

[6] Acts of Assembly, Virginia, 1918, 654, Ch. 400.

f. Who Are Dependents

The question of dependency is one of facts and circumstances in each particular case. There are two distinct classes of dependents. The first class embraces the wife, husband, and children, whose status is clearly determined under the law; the second class can only be found on facts which existed at the time of the accident, leaving much to the Industrial Commission to be determined.[1]

The 1918 Compensation Act classified dependents as follows:

1. A wife dependent upon her husband and whom she had not voluntarily deserted at the time the accident occurred.
2. A husband dependent upon his wife with whom he lived at the time of her accident, if he is at that time incapable of self support and entirely dependent on her.
3. A boy or girl under eighteen years of age who are dependent upon a parent. A child over the ages specified and who is either physically or mentally incapable of earning a livlihood.[2]

In each case of dependency, compensation is made in accordance with the facts as they existed at the time of the accident. In any case, the dependency shall have been for at least three months or more when the injury occurred.[3]

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[1] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932; Virginia Electric Co. v. Place 150 Virginia, 562.

[2] Acts of Assembly, Virginia, 1918, 647, Ch. 400.

[3] Acts of Assembly, Virginia, 1928, 12, Ch. 7.

The dependency of a widow or widower terminates with remarriage. A child's share terminates with marriage or attainment of the age of eighteen. In that event the unpaid compensation which he is receiving is divided among the other dependents in proportion to their dependency.[1] Those persons wholly dependent upon the injured at the time the accident occurred are entitled to share alike, the same being true of partial dependents,[2] though those wholly dependent are given first consideration. These provisions have been amended twice since 1918, but in each case changes were made for the purpose of clarifying the Compensation Act.[3]

g. Security of Payment

Every employer who accepts the provisions of the Workmen's Compensation Act must insure his liability with some corporation, association, organization or state insurance fund which has been approved by the Industrial Commission of Virginia and authorized to transact the business of workmen's compensation in the state.[4] The carrier of such insurance must furnish such information to the Industrial Commission of Virginia as is necessary in determining its solvency.

Employers desiring to insure their own risks (self insurance) may do so if they can furnish the Industrial Commission of Virginia with

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[1] Acts of Assembly, Virginia, 1926, 12, Ch. 7.

[2] Acts of Assembly, Virginia, 1926, 12, Ch. 7.

[3] Acts of Assembly, Virginia, 1924, 478, Ch. 318.
Acts of Assembly, Virginia, 1926, 12, Ch. 7.

[4] Acts of Assembly, Virginia, 1920, 262.

satisfactory proof as to their financial ability to pay claims in accordance with the provisions of the Compensation Act. The custom of the Commission has been to require the self-insurer to deposit acceptable securities with the state treasury to insure the payment of the compensation liabilities. This privilege is given the Commission by the Compensation Act.[1] The state treasury is allowed under law a fee, which is one-twelfth of one per cent a year of the amount of the securities deposited, for acting as custodian.[2]

Self insurers are not permitted to assess their employers or to receive any contributions from their employees in support of the cost of insurance.[3] A fine of one hundred dollars is imposed for such a violation and the deductions are refunded to the employees.[4] Self insurers must make a report to the Industrial Commission annually, supported with sufficient evidence to show that they are complying with the provisions of the act as it relates to them.

In some instances employers may desire to enter into an agreement with their employees to provide a system of compensation benefits. This is allowed if the agreement between them provides for benefits which are specified in the Compensation Act. Contributions are forbidden in such cases unless they confer additional benefits which are at least

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[1] Acts of Assembly, Virginia, 1920, 262.

[2] Acts of Assembly, Virginia, 1920, 263.

[3] Acts of Assembly, Virginia, 1920, 265.

[4] Acts of Assembly, Virginia, 1920, 264.

commensurate with such contributions.[1] The form of policy used is determined by the Industrial Commission.[2] This policy is an agreement which is construed to be a direct promise by the insurer to the person entitled to compensation. Any default of the insured after the injury has occurred does not affect the obligation.[3]

The rates charged by the companies must be fair, adequate, and reasonable, a schedule of which must be sent to the Industrial Commission for approval. Risks of the same kind and degree must bear the same rate.[4]

Insurance carriers must report to the Industrial Commission annually as to the amount of premiums received during the year, less all rebates, which includes returned premiums, cancelled policies, and re-insurance. These reports, even though filed with the Industrial Commission, may be examined by the State Corporation Commission at any time.[5] Should any insurance carrier fail or refuse to make reports as requested, the State Corporation Commission shall assess the tax, which is provided for administrative purposes, against such premium amounts as it may deem just.[6] In the event that fraudulent statements are made to the Industrial Commission as to the condition of a company's business, the offender is guilty of a

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[1] Acts of Assembly, Virginia, 1918, 655.

[2] Acts of Assembly, Virginia, 1918, 666.

[3] Acts of Assembly, Virginia, 1918, 666.

[4] Acts of Assembly, Virginia, 1930, 407.

[5] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 130.

[6] Ibid.

misdemeanor and is punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, and imprisonment not in excess of ninety days.[1]

The 1918 Act provided that all reports and schedule of rates were to be sanctioned by the Commissioner of Insurance.[2] The Industrial Commission of Virginia assumed this responsibility of rate adjustment through an amendment in 1928.[3]

h. Means and Conditions of Settlement

The Workmen's Compensation Act undertakes to safeguard the compensation award which the dependents are to receive. Where certain means of settlement appear to be for the best interest of the claimant, that means will be approved by the Industrial Commission. The claimant, upon application, may request payment to be made monthly, quarterly, or possibly in a lump sum. These applications are approved by the Commission if it is made to feel that such requests are to the advantage of the claimant.[4] In case of a lump sum settlement, the employer is entitled to a discount of five per cent on the aggregate of the unmatured payments included in the settlement.[5] Credit is given the employer for compensation which has

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[1] Acts of Assembly, Virginia, 1930, 407.

[2] Acts of Assembly, Virginia, 1918, 668.

[3] Acts of Assembly, Virginia, 1928, 734.

[4] Acts of Assembly, Virginia, 1922, 742, Ch. 425.

[5] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 101; Brown v. Blackwood Coal and Coke Co. 2 O.I.C. 48.

previously been paid. The amount paid shall, in no case, exceed six thousand dollars.[1]

The Industrial Commission may, if it deems it to the interest of the claimant, request payment of the compensation to a suitable person or corporation appointed by the circuit or corporation court, to administer the benefits for the claimant.[2] The Commission may review the award allowed a claimant within twelve months from the date of the last payment, pursuant to a revised award under the Act. They may increase or decrease the amount allowed, or possibly end it.[3] Prior to an amendment of 1932, no time limit was fixed within which a review could be made.[4] A review cannot effect the money which has already been paid. In the event new evidence can be presented, the time limitation does not alter the power of the Commission to review the case.[5] A change in the physical condition of the injured party is the fundamental basis for reopening a case by the Commission. The burden of proof rests with the party alleging change in condition.[6]

An employer should always request a receipt of all money paid in the form of awards in order to protect himself. In the case of those under

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[1] Acts of Assembly, Virginia, 1938, 387, Ch. 249.

[2] Acts of Assembly, Virginia, 1918, 649, Ch. 400.

[3] Acts of Assembly, Virginia, 1932, 77.

[4] Acts of Assembly, Virginia, 1918, 652.

[5] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 11; American Furniture Co. v. Graves, 141 Virginia 1.

[6] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932, 117; Board v. Lucas 142 Virginia 54.

the age of eighteen, a receipt should be requested of the parent or guardian of the minor.[1] If a question of doubt arises, the employer should apply to the Industrial Commission for a decision.

1. Administration

To administer the provisions of the Virginia Workmen's Compensation Act, the Virginia General Assembly created a Commission which is known as the Industrial Commission of Virginia. This Commission is composed of three members appointed by the Governor of Virginia for a term of six years. One member is classed as a representative of the employers, and one as a representative of the employees. This body elects its own chairman, and each member of the group devotes his entire time to the duties of the office, at a salary of four thousand dollars a year plus expenses.[2]

The Commission employs a secretary, who receives a salary of three thousand dollars. In the event other clerical service is necessary, persons may be employed, with the consent of the Governor, and at a salary set by the Commission.[3]

The Commission is granted the authority to make rules necessary for the carrying out of the provisions of the Compensation Act. It is entirely an administrative body and is not bound by court procedure. It rather has

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[1] Acts of Assembly, Virginia, 1918, 649.

[2] Acts of Assembly, Virginia, 1920, 260.

[3] Acts of Assembly, Virginia, 1920, 260.

power similar to that of a circuit court, in that it may subpoena witnesses, examine party records, administer oaths, force attendance, hear testimony, and decide disagreements arising between employers and employees.

The expense of the Commission is met through a maintenance fund created by a 2.5 per cent tax levied on the insurance carrier on a basis of premiums paid. Any cancelled or returned premiums refunded during the year are credited to the carrier. The "self insurer" supports this fund through a tax levied against his payroll and computed by taking two and one-half per cent of the basic premiums chargeable against similar industries taken from the manual insurance rate for compensation then in force in the state.[1] If it is ascertained that the tax collected for a given period exceeds the total demands upon this, the Industrial Commission may authorize a credit upon the collections for the succeeding year.[2]

Originally all excess funds were to be paid into the State Treasury.[3] This was changed by Amendment in 1928.[4] Other changes in this phase of the Compensation Act reduced the tax imposed upon the employer for administrative purposes from 4 per cent in 1918,[5] to 3 per cent in 1920.[6] This was reduced again in 1930[7] to 2.5 per cent, and has

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[1] Acts of Assembly, Virginia, 1930, 411.

[2] Acts of Assembly, Virginia, 1928, 734.

[3] Acts of Assembly, Virginia, 1918, 658.

[4] Acts of Assembly, Virginia, 1928, 734.

[5] Acts of Assembly, Virginia, 1918, 658.

[6] Acts of Assembly, Virginia, 1920, 262.

[7] Acts of Assembly, Virginia, 1930, 407.

remained at that figure since that time.

All agreements reached between the employee and employer must be sent to the Commission for review and approval within ten days after the injury.[1] In the event of disagreement, a date for hearing is set by the dissenting parties, the hearing to be held in the community in which the injury occurred. These meetings are open to the public.[2] The findings of the Commission are based on the question of fact. It is not required to state the evidence upon which these facts were based.

The Commission will review a case if application is made to it within seven days from the date of the award. An appeal from the decision of the Commission cannot be made to a circuit or county court until the Commission has reviewed the case. If after such writ of error is desired, it may be made within thirty days from the date of the award, or from the date of the notice of its receipt.[3] These cases are placed on the privileged docket of the court.[4]

Under the provision of the Workmen's Compensation Act, the Industrial Commission was created as a competent tribunal, for the purpose of ascertaining the facts causing differences between the employer and employee. Their findings are conclusive and binding. This is made plainer by the statute provision to the effect that only the findings of facts and not

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[1] Acts of Assembly, Virginia, 1918, 653.

[2] Acts of Assembly, Virginia, 1918, 653.

[3] Acts of Assembly, Virginia, 1928, 748.

[4] Acts of Assembly, Virginia, 1922, 743.

the evidence can be certified to the Supreme Court of Appeals.[1] If the complaint for appeal is based upon lack of evidence for the findings of the Commission, a question of law arises and the petitioner must have the evidence certified for a writ of error.[2] The cost of such a suit is to be borne by the person bringing it, if brought without sufficient grounds. If with sufficient grounds, it may be assessed against the defendent.[3]

There have been but few changes in the administration of the Compensation Act since its passage in 1918. The most noticeable of these increased the salary of the Commissioners from thirty-six hundred dollars, as fixed in 1918,[4] to four thousand dollars in 1920.[5] The secretary's salary was also increased from two thousand to three thousand dollars in 1920. The provision granting an appeal from the decision of the full Commission within thirty days from the date of such award was added in 1922.[6] In 1928 the law was further amended, whereby a review before the Commission was necessary before an appeal could be made.[7]

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[1] Industrial Commission of Virginia, Workmen's Compensation Act, Bulletin 1932; American Furniture Co. v. Graves 141 Virginia 1, 1265 E. 213.

[2] Ibid.

[3] Acts of Assembly, Virginia, 1924, 484.

[4] Acts of Assembly, Virginia, 1918, 660.

[5] Acts of Assembly, Virginia, 1920, 260.

[6] Acts of Assembly, Virginia, 1922, 743.

[7] Acts of Assembly, Virginia, 1928, 754.

3. Unemployment Compensation

Our unemployment problem was not of any great proportion while we were an agriculture people. It was when the flow of labor started from the farm to the city, town, mills, and factories that the problem became acute. It is a recognized fact that unemployment affects the health, morale and well-being of the people. The unemployed individual begins to lose his self-respect; his efficiency becomes impaired; he begins to lose the respect of his family and possibly faith in goodness, finally becoming antagonistic toward the existing order of things. It was highly desirable that some balance should be brought about, some adjustment, some equilibrium between the forces of capital and labor. In the study of the desired adjustments the Federal Social Security Act of 1935 evolved, affording aid to the states for unemployment compensation and old age benefits. Accordingly, in December, 1936, the Governor of Virginia called the legislature into special session and the Virginia Unemployment Compensation Act was passed, thereby placing the state in position to receive the grants provided to states having approved the system of unemployment compensation.

a. Source of Revenue

Under the provisions of the Unemployment Compensation Act employers of eight or more workers on a day or part of a day in each of twenty weeks, except where exempted, are subject to a tax on their payroll, which was nine-tenths of one per cent for 1936, and one and eight-tenths per cent

for 1937; two and seven-tenths per cent for 1938 and subsequent years. This tax becomes due and payable once each year. Upon receipt of this money by the Unemployment Compensation Commission it is credited to a fund from which all benefits provided under the Act are paid.[1]

While unemployment benefits were not payable until January 1, 1938, this two-year postponement was made in order to keep the tax rate for 1937 and 1938 at a low figure and at the same time build up a reserve that could not be depleted after the payments of benefits began.

b. Coverage and Exemptions

The Virginia Unemployment Compensation Act exempts from coverage and taxes employers of agriculture labor; domestic service, family employment, maritime service and service for non-profit. Employing units who do not employ eight or more workers for a certain portion of the year in each of twenty different weeks are also exempt.[2] The reasons for these exemptions are that employment in those classes do not seriously contribute to the unemployment problem; also the cost of administering an act covering all such exemptions would be out of all proportion to the amount of taxes received from the employers.[3]

Under the Virginia Law employers of eight or more employees on a day or part of a day in each of twenty weeks come under the Act and are

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[1] Acts of Assembly, Virginia, 1936, 7, 13.

[2] Acts of Assembly, Virginia, 1936, 7, 6.

[3] W. H. Rouse, The Story of the Act, Address. 1936.

subject to the compensation tax on their yearly payroll.[1] The twenty weeks of employment within the year is to eliminate short seasonal employment which could deplete the fund in an unfair way against the more permanent employments.[2]

In determining the number of workers, the law provides that if an employing unit, employing one or more persons during a calendar year, combines with another unit, and the two together have as many as eight workers for the required time, they both are considered employers and are subject to all provisions of the act. Also, if an employing unit acquires the business of an employer who is covered under the act, this succeeding unit becomes an employer. Employing units affiliated under common control, are separate and distinct employers if they jointly employ eight or more workers for the requisite time. An employer who acquires the business of an employing unit having less than eight workers within the year, becomes subject to the tax on the payrolls for both concerns.[3]

Employees are covered under the Virginia Law if they perform their services within the following limitations:

1. If their work is wholly within the state, with minor work outside.
2. If some of their work is performed within this state and

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[1] Acts of Assembly, Virginia, 1936, 7, 6.

[2] W. H. Rouse, The Story of the Act, Address, 1936.

[3] Acts of Assembly, Virginia, 1936, 7, 4.

controlled from within the state.

3. If some of the service is performed in Virginia, yet not controlled from within this state or any state in which some of the work is done, yet the individual's residence is in this state, employee receives benefits if employed along with eight or more persons.

4. If some of the service performed by the worker is in this state and another state in which there is no coverage under a compensation law, then the employee is covered by the operation of the Virginia Act.[1]

c. Eligibility Conditions

A worker upon becoming unemployed is required to register for work at an employment office and file there his claim for unemployment benefits. During a waiting period of two weeks a representative of the commission investigates his claim and determines the amount of his weekly benefits. The applicant is required to report to the employment office at prescribed intervals and show that he is able to, willing to, and available for work if a job should be offered him. He must not refuse to accept suitable work and must show that his unemployment when he lost his job was not caused by his own fault.

The legislature of 1938 by amendment empowered the commission with the authority to prescribe rules for ascertaining an average weekly wage

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[1] Acts of Assembly, Virginia, 1936, 7, 8.

for part time and seasonal workers.[1]

d. Disqualifications for Benefits

The legislature undertook under the Unemployment Compensation Act to safeguard employers against human parasites by setting forth the following specific disqualifications for benefits in addition to the waiting period:

1. If the commission finds that the employee left his work voluntarily and without good cause, the employee may not receive benefits for that week and from one to five weeks following according to the circumstances in each case.
2. If the commission finds that the worker has been discharged for misconduct, employee may not receive benefits for that week and for less than one or more than nine weeks based upon the seriousness of the misconduct.
3. If the commission finds that the employee fails to avail himself of opportunities for work, applicant shall be disqualified for that week and not less than one or more than five weeks immediately following, according to the circumstances in each case. In determining the suitability of work for the individual, the commission shall consider the employee's health, training, experience, general welfare, location of work, and prospect for securing work in his

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[1] Acts of Assembly, Virginia, 1938, 1010.

customary occupation.[1] In no case shall work be deemed suitable and benefits denied under the following conditions; if position offered is vacant due to a labor dispute; if working conditions are substantially less favorable than those for similar work in the locality; or, if the employee should find it necessary to join a company union, resign or refrain from joining a recognized labor organization.

4. If the employee is totally or partially unemployed because of a cessation of work due to a labor dispute where he was last employed, he does not receive any compensation unless the commission finds that he did not participate directly or indirectly to cause the stoppage of work or that he was not working with or affiliated with any group which was in any sense interested in the dispute. Any branch of work operated as a separate business shall be termed a separate factory.

5. If the employee is receiving compensation under any federal or state law, he is not to receive benefits under the Unemployment Compensation Act.[2]

e. Computation of Benefits

The weekly benefit amount an individual may receive is that amount

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[1] Acts of Assembly, Virginia, 1936, 7, 8, 10.

[2] Acts of Assembly, Virginia, 1936, 7, 9, 10.

he would be entitled to receive for any one week of total unemployment before any deductions are made for remuneration received from odd jobs. This weekly amount is based upon the individual's full time weekly wage which he would receive if he were employed at the most recent wage rate in his base period or the first eight of the last nine completed calendar quarters immediately preceding the beginning of his fifty-two consecutive week period or base year.[1] The maximum benefit which one receives is not to exceed the balance credited to the employee's account of sixteen weeks.

(1) Total Unemployment

A person is said to be totally unemployed in any week during which he performs no services with respect to which wages are paid to him.[2] Wages here do not include remunerations from subsidiary work and odd jobs.[3] The week of total unemployment begins when the worker has fulfilled the eligibility conditions set forth above. For this total unemployment he may receive benefits at the rate of 50 per cent of his full time weekly wage, but not more than fifteen dollars per week or less than three, or four-fifths of the full-time weekly wages, whichever is the smaller amount. Deductions are made for remunerations received from odd jobs and subsidiary work if this work yields an excess of two dollars per week.[4] The original law setting the minimum weekly compensation at

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[1] Acts of Assembly, Virginia, 1936, 7, 7.

[2] Acts of Assembly, Virginia, 1936, 7, 8.

[3] Acts of Assembly, Virginia, 1938, 1009.

[4] Acts of Assembly, Virginia, 1938, 1009.

five dollars was changed by amendment in 1938.[1]

(2) Partial Unemployment

An individual is considered partially unemployed in any week of less than full time work if his wages for this work are less than the weekly benefits he would receive if totally unemployed.[2] The original law considered partial unemployment only when his wages were five-sixths of that he would receive if totally unemployed.[3] The term wages is not to include remunerations from odd jobs and subsidiary work if such compensation is less than two dollars a week.[4] Such partial benefit shall be an amount equal to the difference between the weekly benefit amount and four-fifths of his wages for such week.[5] The original law placed the partial benefits at an amount equal to the difference between the weekly benefit amount and five-sixths of his weekly wages. This was changed in 1937.[6] with the provision that two weeks of partial unemployment should constitute one week of total unemployment.

f. Administration

The Unemployment Compensation Act creates a commission which is

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[1] Acts of Assembly, Virginia, 1936, 7, 8.

[2] Acts of Assembly, Virginia, 1936, 7, 8.

[3] Acts of Assembly, Virginia, 1938, 1009.

[4] Acts of Assembly, Virginia, 1938, 1009.

[5] Acts of Assembly, Virginia, 1938, 1009.

[6] Acts of Assembly, Virginia, 1936, 7, 8.

known as the Unemployment Compensation Commission to administer the provisions of the Act. This Commission consists of the Commissioner of Labor and two other members appointed by the Governor with the confirmation of the General Assembly. One of these is designated as Chairman. The members of the Commission serve for a term of four years. The Commission is required to establish two co-ordinate divisions: the state employment service and the unemployment compensation division. The employment service division assumed the duties which had previously been under a separate employment agency provided for by an Act of 1924. All positions are filled by persons selected and appointed on a non-partisan merit basis. The Commission is empowered to appoint state and local advisory councils of equal employer and employee representatives and such members representing the general public as it may designate. Every employer is required to keep true and accurate records, prescribed by the Commission which shall be inspected by a representative of the Commission at regular intervals.[1]

4. Old-age Insurance and Assistance

a. The Federal Insurance Plan

The arguments for old-age insurance rest on different grounds from those for unemployment insurance. Men and women who have reached sixty-five or seventy are no longer fit for manual work. They may still have the energy, the will or the need to go on, yet are dropped because

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[1] Acts of Assembly, Virginia, 1936, 7, 21.

employers feel that they will not be as efficient or as adaptable as younger workers. These aged persons are then thrown upon their families or perhaps become a charge upon the state. Old-age insurance is therefore advocated on the ground that everyone must be compelled to provide for his own old age, and that a government plan will most likely make this provision safe.

The plan set up under the Federal Social Security Act is financed by taxes on payrolls and wages. These taxes are shared equally by the employer and employee and total two per cent a year from 1937 to 1939, inclusive, and then rise by one per cent steps at three year intervals to six per cent in 1949, where it will remain. In calculating these taxes and the benefits to which each individual is finally entitled, no account is taken of any sum earned by any person in excess of $3,000 a year.[1]

Old age annuities are paid from this created fund ranging from a minimum of ten dollars to a maximum of eighty-five dollars a month. They are calculated according to the following formula: "They are to be one-half of one per cent a month of the first $3,000 the worker has earned during the period he has been making contributions, plus one-twelfth of one per cent a month on the amount between $3,000 and $45,000, plus one-twenty-fourth of one per cent a month on any amount over $45,000."[2]

It is interesting to note how this plan works out as between younger

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[1] W. W. Aldrich, An Appraisal of the Federal Social Security Act, 1936, 24, Address, Institute of Public Affairs, Charlottesville, Virginia.

[2] Ibid.

and older workers on the same income. Those who begin paying taxes on earnings of one hundred dollars a month from January 1, 1937, until retirement at the age of sixty-five will receive pensions of seventeen dollars and fifty cents a month if their retirement falls on January 1, 1942, of twenty-seven dollars and fifty cents a month if it falls in 1952; of thirty seven dollars and fifty cents a month if it falls in 1962, and fifty-three dollars and seventy-five cents if it falls in 1982. In other words, their pensions will be only 57 per cent higher when they have paid taxes for three times as many years; 114 per cent higher when they have paid taxes for five times as long; and only 207 per cent higher when they have paid taxes for nine times as long.[1]

The theory behind this is that the framers of the bill did not want to penalize the older workers unduly because there had not previously been a plan to which they could contribute. They felt that annuities should not fall below a certain minimum monthly amount.[2]

The younger and better-paid workers indirectly subsidize the older and lower paid workers. A direct subsidy is made impossible by the provision in the law which gives each worker the certainty of taking out more than he pays in. The subsidy therefore comes from the employer's contribution. Under the old age insurance system, until 1942, single cash settlements are made to covered workers reaching the age of sixty-five and to heirs of those who die. If a worker dies

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[1] W. W. Aldrich, An Appraisal of the Federal Social Security Act, 1936, 26. Address, Institute of Public Affairs, Charlottesville, Virginia.

[2] Ibid.

before reaching the age of sixty-five, his estate receives a lump payment equal to 3½ per cent of the total wages on which he has paid taxes. If he dies after sixty-five, his estate receives the same amount less any benefits paid to him during his lifetime. He is also to receive this 3½ per cent of his total wages if he fails to qualify for the plan upon reaching sixty-five.[1]

Old-age insurance is a retirement income. The benefits are based on wages and are paid to qualified wage earners regardless of need. It is the only phase of the Federal Social Security Act that is administered entirely by the Federal Government.[2] The old-age insurance section of the Act applies to all states, and does not require any state legislation.

An early development which may be looked for will be an extension in the provisions of the Old-Age Insurance section of the Social Security Law to include agricultural labor, domestic service and other uncovered occupations. The benefits of those retiring in the early years of the program will possibly be increased. The near future will probably find the aged wives, widows, and children of those who die before sixty-five included among the benefit recipients.[3]

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[1] W. W. Aldrich, An Appraisal of the Federal Social Security Act, 1936, 26, Address, Institute of Public Affairs, Charlottesville, Virginia.

[2] Richmond Times Dispatch, Editorial, August 14, 1938.

[3] Ibid.

b. The State Old-age Assistance Law

(1) Statutory Requirements

The Public Assistance Act states that an aged person shall be eligible for assistance if he

1. Has attained the age of sixty-five years.
2. Has resided in this State for at least five years within the nine years immediately preceding the date of application for assistance, and continuously for one year immediately preceding the application.
3. Is not an inmate of, or being maintained by, any county, municipal, state or national institution; such an inmate may make application for old-age assistance, but such assistance shall not begin until after he ceases to be an inmate.
4. Has not made an assignment or transfer of property so as to render himself elegible for old-age assistance under this Act at any time within five years immediately prior to the filing of the application for this assistance.
5. Is needy and in need of public assistance.[1]

Old-age assistance should not be confused with old-age insurance. The former seeks to enable needy people to live at home instead of going to a poorhouse. Its payments are granted solely on the basis of need.

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[1] Acts of Assembly, Virginia, 1938, 646.

It is exceedingly important that acceptable proofs be furnished for these statutory requirements. Failure to secure and record such verifications in the case records may result in financial loss to the state and locality. Documentary evidence is required as proof in each of the statutory requirements unless it is impossible to locate such documents, in which case other evidence may be accepted.[1] Whenever documentary evidence is seen by the case worker and cited as verification, the case record and the application form should show (1) the name of the worker making application, (2) the date the evidence was seen, (3) where it was seen, giving title, page and line number of the public-record books, (4) description of document, (5) other than public record, evidence must be sufficient to indicate authenticity.[2]

(2) The Application

Applications for old-age assistance are made to the local Board of Public Welfare. This body of three, appointed by the Circuit Court judge, upon receipt of this application requires the local superintendent to make a prompt investigation to determine the correctness of the statements included in the application. These findings are submitted to the Board in writing, together with recommendations.[3]

Upon the basis of this written record, with its budget and other

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[1] State Department of Public Welfare, Social Case Work Procedures, Bulletin, 1939, 11, 12, 13, 14.

[2] Ibid., 1939, 11.

[3] Acts of Assembly, Virginia, 1938, 646.

proofs of elegibility, the Board will decide upon the elegibility of the applicant, the amount of assistance which he needs, and the date upon which such assistance shall begin, provided the applicant is elegible and funds are available. As soon as the Board makes its decision, the applicant should be notified in writing of the action taken by the Board. The amount of grant may not be changed, modified or revoked after the original decision by the Board, without additional action by the Board. All assistance grants made under this Act may be reconsidered by the local Board as frequently as the Board deems proper, or as often as the State Board of Public Welfare may require.[1] Should the application be denied, the individual shall be granted an opportunity for a fair hearing before the State Board.[2]

(3) The Grant

After the total income of the applicant has been estimated and the total necessary expenditures of the family arrived at, the available income should be subtracted from the need, and the budgetary deficiency noted. The grant allowed should be as nearly equal to this deficiency as the funds and legal restrictions permit, provided, that no grant should be so small that it does not insure living conditions consistent with health and decency.

It is the purpose of this Act to insure at least minimum security

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[1] Acts of Assembly, Virginia, 1938, 647.

[2] Acts of Assembly, Virginia, 1938, 649.

and decent, healthful, living for the recipients. The conception that the total fund available should be equitably divided among all elegible applicants is not in accord with constructive social planning. The grants should have a constructive value for the individual and for society.

The special statutory limitations of classified-assistance grants must, of course, be adhered to. Grants for old-age assistance are limited to $20 a month for each individual recipient. The Act requires that a deduction of whatever cash income the applicant may have be made from the maximum grant allowed. In other words, if an applicant needs $25 a month and has an income of $10, the Board will subtract the $10 income from the maximum grant, which is $20, and will fix the actual grant at $10 a month, even though it is $5 short of the actual needs of the applicant.[1] Assistance shall be paid monthly or at such times as the rules and regulations of the State Board of Public Welfare may provide, since they constitute the central governing body for old-age assistance.[2] These grants allowed may be reconsidered and changed in amount at such times as the local Board may deem it necessary. It may even cancel or revoke assistance for cause or suspend assistance for such period as it may deem proper.[3]

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[1] Acts of Assembly, Virginia, 1938, 647.

[2] Acts of Assembly, Virginia, 1938, 648.

[3] Acts of Assembly, Virginia, 1938, 648.

(4) Recovery From Estate of Recipients

The estate of a deceased recipient of old-age assistance is subject to a lien in the amount of such assistance as may have been paid the person during his life. The local Board pays this money realized from the lien into the treasury of the county. The net amount so received shall be prorated between the said county, the state and the United States in the same proportion that the respective governments contributed to the individual's assistance.[1]

The writer is not of the opinion that any appreciable amount will be received from this source, since most persons in such destitute conditions have recorded claims against their estates. This being true, the verbal claim for recovery under the Old-Age Assistance Act may die with the individual.

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[1] Acts of Assembly, Virginia, 1938, 648-649.

Chapter V

CONVICT LABOR

Virginia did not have any system of, or policy for, convict labor prior to 1900. The laws before that time merely permitted the use of convict labor by railroad companies, the first being the one passed in 1879 which granted the use of convict labor to the James River and Kanowha Railroad Company.[1] Another law in 1885 gave this privilege to the Danville and New River Railroad Company.[2] Not until 1887 was compensation for this labor required of the companies holding the release of the prisoner. That year a provision recalled all convicts unless the companies agreed to pay twenty-five cents per person for each day actually employed.[3] The convict did not receive this money. It was put to the credit of a fund established by the Superintendent of the Penitentiary and was to be used as he saw fit.

Virginia's policy was changed in 1906 when the State Convict Road Force was established, composed of male prisoners convicted of felonies and misdemeanors, and sentenced to that Force.[4] Prisoners deemed dangerous could be employed by the Penitentiary Board at work for the state

[1] Acts of Assembly, Virginia, 1879-1880, 12.

[2] Acts of Assembly, Virginia, 1885-1886, 461.

[3] Acts of Assembly, Virginia, 1887, 547.

[4] Acts of Assembly, Virginia, 1906, 74.

in the Penitentiary, in state or county stone quarries, or at the State Farm. Prisoners actually confined to the Penitentiary at Richmond have been used since then in the manufacture of articles required by the state departments and institutions. Any surplus of those articles may be supplied to any municipal or county agencies in the state by the State Prison Board.[1] The law also provides for the use of convict labor in the manufacture of automobile license plates and road signs used in the Commonwealth. Contracts for the manufacture of such plates for municipalities are permitted under this law.[2]

In order to provide more employment for those confined in prison, the General Assembly of 1936 authorized the establishment of a tannery at the Penitentiary, to be operated for the convenience of residents of the state. For tanning such hides the State Prison Board may fix such reasonable charge, not in excess of ten per cent over the cost of such tanning process, or in lieu of such currency charge, may retain so much of said hides not to exceed one-half of the leather processed and produced as payment. The leather retained is to be used at the Penitentiary for such articles as the board may determine, but none is to be offered for sale.[3]

Virginia, by its laws undertakes to keep its convicts at the hardest labor suitable to their sex and physical fitness. This labor does not

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[1] Acts of Assembly, Virginia, 1924, 90.

[2] Acts of Assembly, Virginia, 1924, 90.

[3] Acts of Assembly, Virginia, 1936, 536.

exceed ten hours a day for each day other than Sunday or public holidays.[1] The inmates in the Penitentiary are required to work only eight hours a day; this, however, is a regulation of the State Prison Board. Those on the State Farm work ten hours a day as provided by law.[2]

All convicts in this state are paid a compensation regardless of the nature of their work, in the amount of ten cents a day for each day he labors. This money accumulates and is paid to him at his discharge. He is allowed to draw on this amount during his tenure but cannot use more than fifty per cent of it in this way.[3]

"Prisoners do not stand in the normal relation of producers to the commodity market; they go on working, regardless of the fluctuations of business; they can undersell any competition, for they do not have to meet the usual costs of production and in the last resort they can always fall back on the taxes."[4] It has been said that manufacturers feel the competition of convict labor more in times of depression.[5] It is true that the use of convicts on roads or in other public works, and in the manufacture of furnishings used by the state agencies, does create some competition; however, the Virginia Law tends to minimize this competition

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[1] Acts of Assembly, Virginia, 1928, 564.

[2] Rice M. Youell, Virginia State Penitentiary Superintendent, Letter, January 19, 1939.

[3] Acts of Assembly, Virginia, 1928, 564.

[4] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 359.

[5] Ibid., 359.

between convict and free labor by restricting the sale of goods to municipalities, county agencies in the state, and to state departments and institutions.

A more serious aspect of convict-labor competition exists with respect to interstate commerce. The laws restricting the sale of convict-made goods within the state caused convict-made goods from other states to be brought in and offered for sale at reduced prices. To remedy this situation, Virginia enacted a law in 1934 prohibiting the sale or open market within her borders of goods manufactured by prisoners of other states.[1] Attempts to deal with this problem before were unsuccessful because of the Federal constitutional right to govern interstate commerce. The Hawes-Cooper Act of 1929, which went into effect in 1934, divested prison-made goods, manufactured in one state and shipped into another, of their interstate character and rendered them subject to the laws of the state in which they were offered for sale.[2] This led immediately to the enactment of Virginia's Law in 1934 to combat this unfair competition.

The passage of Ashurst-Summers Act of 1935, strengthened the enforcement of the Hawes-Cooper Act, by forbidding the transportation of convict-made goods into a state which prohibits the sale of such goods on the open

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[1] Acts of Assembly, Virginia, 1934, 506, 507.

[2] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 360.

market. It also requires that all prison-made goods shipped in interstate commerce be marked to show the shipper, consignee, and the prison in which they were manufactured.[1]

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[1] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 360.

Chapter VI

ADMINISTRATION

Massachusetts, in 1869, was the first state in the world to establish a permanent bureau for the investigation of labor conditions. With the precedent set by this state, and with the creation of the Bureau of Labor in the Department of Commerce and Labor at Washington in 1884, similar permanent machinery has been established in almost every state in the union.[1] It has been said that these bureaus at first were established primarily on the petition of labor organizations.[2] Since that time the problem of labor and capital has become recognized as a permanent problem requiring such machinery.

Virginia's Bureau of Labor and Industrial Statistics was established in 1897.[3] The name of this bureau was changed in 1924 to the Bureau of Labor and Industry[4] and to the Department of Labor and Industry in 1927.[5]

The largest activity of this department is the collection of statistics of wages, hours, and conditions of labor, this data being presented to the Governor in an annual report. This report shows statistical details of all labor in penal institutions, and in industrial pursuits

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[1] John R. Commons, and John B. Andrews, Principles of Labor Legislation, Harper & Brothers, New York, 1936, 445.

[2] Ibid., 445.

[3] Acts of Assembly, Virginia, 1897-98, 894.

[4] Acts of Assembly, Virginia, 1924, 30.

[5] Acts of Assembly, Virginia, 1927, 116.

in the state, especially in relation to the industrial, social, educational, and sanitary conditions of the laboring classes, and in relation to the permanent prosperity of the productive industries of the state.[1] These reports are passed on by the Governor for legislative investigation. It should be pointed out that definite recommendations for legislative action often accompany these reports. The Commissioner of Labor heads this bureau and is appointed by the Governor, by and with the consent of the state senate. The original law of 1897 fixed his term of office at two years,[2] but the term was increased to four years in 1926.[3]

The powers and duties of the Commissioner of Labor may be stated as follows:

1. General Supervisor over the Bureau of Labor and Industry with the authority to appoint such assistants as are necessary in carrying out the duties of his department.
2. Secure the enforcement of all labor laws.
3. Inspects factories, mercantile establishments, and shops as often as possible.
4. May take testimony, administer oaths, question employees in any plant at his will.
5. Prosecutes or authorizes the prosecution of violators

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[1] Acts of Assembly, Virginia, 1924, 30.

[2] Acts of Assembly, Virginia, 1897-98, 894.

[3] Acts of Assembly, Virginia, 1926, 17.

of labor laws.[1]

Amendments since 1897 have served to clarify the provisions of this section of the law. There has been no appreciable change in the original provisions.[2]

The Department of Mines created under an Act of 1912 was subject to the control of the Bureau of Labor and Industry.[3] The duty of this department is the supervision of the execution and enforcement of all laws enacted for the safety of those employed in the mines of the state and for the protection of mine property. This department was placed under the supervision of a State Mine Inspector, appointed by and under the control of the Commissioner of Labor.[4] This inspector is a person with a thorough knowledge of the properties of mining. He makes regular inspection visits to all mines and reports to the Commissioner his findings.[5]

This inspector may be removed from office for incompetency by the Commissioner of Labor.[6] An amendment of 1927 continued the provisions of this act under the Division of Mines.[7]

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[1] Acts of Assembly, Virginia, 1897-98, 894.

[2] Acts of Assembly, Virginia, 1906, 47. 1914, 566. 1922, 607.

[3] Acts of Assembly, Virginia, 1912, 419.

[4] Acts of Assembly, Virginia, 1912, 419.

[5] Acts of Assembly, Virginia, 1912, 419.

[6] Acts of Assembly, Virginia, 1912, 419.

[7] Acts of Assembly, Virginia, 1927, 116.

The Department of Labor and Industry in Virginia for the sake of efficiency is separated into several divisions, namely: the Division of Research and Statistics, the Division of Women and Children, the Division of Mines, the Division of Factory Inspection, and the Division of Workmen's Compensation. These operate under the Commission of Labor with subordinate heads appointed by the Commissioner, functioning in their special undertakings as individual units. Each division is to render co-operative aid in order that the entire Department may function as a cohesive unit in the enforcement of all labor laws. Violations of labor laws undoubtedly diminish with strict enforcement and the consciousness on the part of employers that deviations from the labor codes will not be permitted; all of which suggest the necessity of stricter enforcement in Virginia.

To guarantee the most satisfactory administration of labor laws for women, it is advisable to have a woman in charge of the Division of Women and Children. Inspectors should be given a free hand in making their inspections of conditions existing in industrial establishments. These men inspect all washrooms, and places where people are employed, and make recommendations for the protection and proper safeguarding of all machinery and other equipment, so as may render them safe to the employees.

The Department of Labor and Industry is maintained by appropriations of the General Assembly, which fixes the amount of compensation

of all persons performing service in the Department.[1]

An Act of 1932 established a Safety Codes Commission to study and investigate all phases of safety in industry and to make recommendations to the General Assembly from time to time. This Commission is composed of the Commissioner of Labor, a member of the Industrial Commission and the State Health Commissioner, all of whom serve on this body without pay.[2]

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[1] Acts of Assembly, Virginia, 1897-98, 894.

[2] Acts of Assembly, Virginia, 1932, 26.

Chapter VII

CONCLUSION

Laws of major importance to labor in Virginia passed in the last four years are the Unemployment Compensation Act, the Nine-Hour Law relating to women workers, and the Old-Age Assistance Law. For this legislation much credit is due the Department of Labor. The need for further legislation in Virginia is in no wise due to neglect of this Department, in that it has suggested splendid legislation which failed to pass.

In order that one may have a clearer picture of these needs we shall first consider child labor. Statistics show that the certificates issued for the employment of children in inside occupations numbered 152 in 1937 as compared with 148 in 1936 and 37 in 1935.[1] This trend shows a gradual but progressive break-down of labor standards and the inability and in some cases disinclination of industry under modern competitive conditions to help recovery and assure maximum employment and purchasing power by maintaining proper child labor standards.[2] In 1933, under the NRA codes, sixteen years was set as the minimum age for industrial employment; in certain dangerous occupations the age limit was eighteen. As a result, child workers virtually disappeared from

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[1] Fortieth Annual Report of the Department of Labor and Industry of Virginia, 1937, 5.

[2] Ibid.

industry.[1] It is reasonable for us to believe that many children formerly employed re-enrolled in school. When these codes were declared invalid the trend was reversed. To assist in bringing about better conditions it would be well to fix upon a sixteen-year minimum age for factory work and for all employments during school hours; and to exclude all under fourteen years of age from non-factory work outside of school hours. This should be accompanied by an adequate school curriculum and provision for out-of-school employment, as well as compulsory education for all under sixteen years of age. The employment certificates should be required of all minors under eighteen, and children should be excluded from all hazardous occupations. Night work should be prohibited to all under eighteen years of age. The maximum hours under eighteen should not exceed eight hours a day or forty-four hours a week. The Virginia law protects those under sixteen by this limitation at the present time.

The physical effects of premature labor are disastrous. The years of fourteen to sixteen are years of development, and to tax children at this period in life is likely to undermine the strength of future years. It is difficult to regulate work in the home or on the farm, but progress can be made through the enforcement of compulsory school attendance and through services which inform the people of the evils of child labor. A substantial social need urges us to promote such laws and their enforcement as will protect our minors against premature employment.

The hour law passed in 1938 governing women was a progressive step in Virginia. It would have been more progressive had it limited not

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[1] United States Department of Labor, Child Labor Bulletin, 1938, 2.

only the work of women but that of men as well. An eight-hour law would have been more desirable. The recent industrial development in Virginia has been due in part to the long hours and low pay permitted in the state. Men are allowed to work in many cases as long as sixty hours or more per week and at very low pay. These conditions can be alleviated only by restrictive labor laws. In arriving at a fair wage rate, a study should be made of living conditions and costs. This phase of legislative neglect has engendered labor disputes throughout the country.

Inspectors in the State Department of Labor and Industry have done commendable work in mediating strikes and disturbances which have occurred throughout the state. While the time of inspectors and money spent in mediating strikes is a vital function of the Department of Labor, it takes the inspector from the regular routine of inspection and law enforcement. In order to free the inspectors for the performance of their primary duty, a mediation division should be established in the Department, with sufficient funds to perform its duties efficiently.[1]

Experience with the practical operation of Workmen's Compensation in Virginia has extended over a period of twenty-one years. During that time the principle has become recognized that employers should be held responsible for injuries to their employees arising out of and in

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[1] Virginia Senate Document No. 1. A, 1938, 43

[1] George T. Starnes, and others, A Survey of the Methods for the Promotion of Industrial Peace, Bureau of Public Administration, Charlottesville, Virginia, 1939.

the course of their employment. During the two decades of experience with the Workmen's Compensation Law many defects have become evident, and while improvements have been made there still remains the need for further refinements of the law. The tendency in Virginia has been to increase the benefits, reduce the waiting period, and extend the period of free medical attention, but injured employees are not yet so well cared for as in certain other states.[1] It is not surprising that Virginia's legislative body has given little consideration to the inclusion of occupational diseases within the protective provisions of the law, since less than half the states have such laws, and only Kentucky and North Carolina among the southern states include occupational diseases in their compensation laws.[2] With this start in the South, Virginia may be expected to increase the benefits and extend the coverage so as to include occupational diseases in the near future.

The social gains through unemployment compensation are numerous. Its first effect relieves the worker of the fear of insecurity. He knows that if he should lose his job he will not immediately face a loss of income. This relief will not be uncertain, and it will be an amount which he can receive as an earned right. It may also be said that this insurance will help to stabalize the buying power of the worker.

All contributions under the Act are paid through a tax on the employers. The following reasons for not including the employees under

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[1] Albion G. Taylor, Labor Problems and Labor Law, Prentice-Hall, Inc., 1938, 270, 274-276.

[2] Ibid., 267.

the taxable provisions of this Act have been offered:

1. Workers are not responsible for mass unemployment

2. Workers suffer most from unemployment

3. The wages for the worker cannot justly be taxed

4. Deductions from wages cannot be shifted to the consumer

These reasons may be sound, but nevertheless in exempting workers from the payment of any contribution to their protection they are relieved of many advantages which they would receive should they be allowed to contribute. They would be assured of more adequate protection. They would have more voice in the administration of the system and there would be a decided reduction in the number of false claims.

The laws governing the inspection of mines and their operation are relatively satisfactory. Obviously there is a great need for legislation to prevent coal dust explosions. This need was specifically demonstrated by the investigation made by the special commission appointed by Governor Price following the disastrous explosion occuring in the Keen Mountain Mine of the Red Jacket Coal Company on April 22, 1938. The recommendations of that commission were as follows:

(1) Dobie shooting should be specifically forbidden and the rule carefully enforced. Where necessary to shoot rock, slate, etc., permissible explosives should be used and the drill hole properly stemmed or tamped with an incombustible material, preferably clay and sand.

(2) When rock dusting is necessary because of the dry and dusty condition of the mine it should be adequately done and the

operator should secure and have convenient the necessary equipment for testing same.

(3) When an inspector leaves instructions for additional rock dusting it should be done promptly and report of the fact should be made to said inspector.

(4) All men, literate or illiterate, should be instructed in the laws and rules governing their work and in the hazards to themselves and to others before they are allowed to enter upon actual employment.

Safety committees should be organized and meetings held at least once a month at a time and place convenient for the attendance of men on all shifts, and they should be given additional information and instructions from time to time regarding any hazard arising from developments in their particular work.

(5) Employees should be encouraged to prepare themselves for examinations necessary to secure certificates of competency in order to qualify for positions of foremen and fire bosses.[1]

These suggested measures seem necessary in order to bring labor legislation in Virginia up to the standard of the more progressive states.

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[1]Thomas B. Morton, Letter, July 1936.

Appendix

THE FAIR LABOR STANDARDS ACT OF 1938

1. Policy

The Fair Labor Standards Act, known also as the Wage and Hour Law, was passed by the Congress of the United States in 1938. The passage of this law started the National Government on the large and difficult task of regulating the maximum hours worked, the minimum wages paid, and child labor, in the interest of wage earners, employers, and the public.[1] "The law is designed to achieve as rapidly as possible the objective of Congress to fix a ceiling of forty hours on the standard work week, a floor of forty cents an hour under wages, and the abolition of child labor."[2] The following definition was placed in the initial paragraph of the law:

> The Congress hereby finds that the existence, in industries engaged in (interstate) commerce or in the production of goods for (interstate) commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.

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[1] United States Department of Labor, The Fair Labor Standards Act, Bulletin, 1938, 3.

[2] Ibid.

1. Causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several states.

2. Burdens commerce and the free flow of goods in commerce.

3. Constitutes an unfair method of competition in commerce.

4. Leads to labor disputes burdening and obstructing commerce and the flow of goods in commerce.

5. Interferes with the orderly and fair marketing of goods in commerce.[1]

In the next paragraph the law states that "It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several states, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power."[2]

2. Hours

To assist in correcting these substandard working conditions Congress decreed that the standard work-week in interstate industries should be reduced to forty hours after October 24, 1940 under the following schedule:

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[1] United States Department of Labor, The Fair Labor Standard Act, Bulletin, 1938, 4.

[2] Ibid.

1. From October 24, 1938 to October 24, 1939, forty-four hours.

2. From October 24, 1939 to October 24, 1940, forty-two hours.

3. Thereafter forty hours.[1]

Employment in excess of the standard work-week is not forbidden by the law provided the compensation received by the employee for this overtime is at a rate not less than one and one-half times the regular rate at which he is employed. That is, an employee receiving twenty-five cents an hour would get thirty-seven and one-half cents an hour for all time worked over the standard.[2]

3. Wages

Congress provided two methods of attaining the goal of a forty cent an hour floor under wages. Under the law wages cannot be less than:

1. Twenty-five cents an hour from October 24, 1938 to October 24, 1939.

2. Thirty cents an hour from October 24, 1939 to October 24, 1945.

3. Forty cents an hour thereafter, unless it be shown by a preponderence of evidence that such a rate would substantially curtail employment in the industry.[3]

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[1] United States Department of Labor, The Fair Labor Standards Act, Bulletin, 1938, 4.

[2] Ibid.

[3] Ibid.

Although Congress provided six years as the limit to reach the forty cents basic rate, it realized that certain industries would be able to make their necessary adjustments within a shorter period of time and without curtailing employment. To take care of these cases Congress provided for wage determination by industry committees representing in equal number the employers, and employees, and the public, in a particular industry.[1]

These committees are appointed by the Administrator and are given information on the wage problem in their industries in addition to legal and clerical assistance. These committees have the authority to summon witnesses and perform almost any other functions necessary for their work.[2] Any reasonable wage classifications within an industry may be made, provided the highest minimum rate fixed does not exceed forty cents an hour, and provided it does not seriously curtail employment.[3]

4. Industries Covered

The wage and hour provisions of the Act apply to the following, with exceptions noted below.

1. Employees engaged in producing, manufacturing, handling

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[1] United States Department of Labor, The Fair Labor Standards Act, Bulletin, 1938, 5.

[2] Ibid., 8.

[3] Albion G. Taylor, Labor Problems and Labor Law, Prentice-Hall, Inc., New York, 1938, 364.

or in any manner working on goods moving in interstate commerce.

2. Employees engaged in any occupation or process necessary to the production of these goods.

3. Employees engaged in interstate transportation, communication, or transmission.[1]

5. Exemptions

The wage and hour provisions do not apply in any of the following cases:

1. Agricultural workers, seamen, employees of airlines, street cars, motorbuses, interurban railways, and employees of weekly or semi-weekly newspapers with a circulation of less than 3,000, and with the major part of their circulation in the country.

2. Those persons employed in a bona fide executive, administrative, professional, or local retailing capacity, or as outside salesmen.

3. Persons employed in any retail or service establishment, the greater part of its service being in intrastate commerce.

4. Certain fishery workers.

5. Those employed in the area of production to handle, prepare, or can agricultural or horticultural commodities for

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[1]United States Department of Labor, The Fair Labor Standards Act, Bulletin, 1938, 7.

market, or to make dairy products.[1]

The persons listed below were given complete exemption from the hour provisions of the law:

1. Employees of railways, motorbuses and truck carriers which are regulated by the Interstate Commerce Commission.

2. Employees of employers engaged in the first processing of milk, whey, skimmed milk, or cream, into dairy products; in the ginning and compressing of cotton; in the processing of cotton seed; and in the processing of sugar beets, molasses, cane, or maple sap, into raw sirup.[2]

Those persons which are partially exempt from the maximum-hour provisions include:

1. Employees in seasonal industries who work up to twelve hours a day, or fifty-six hours a week, for not more than fourteen weeks.

2. Employees engaged in the first processing, canning or packing of fruits or vegetables, or in the first processing of agricultural commodities during seasonal operations, or in slaughtering of livestock, are exempt from all maximum-hour provisions for fourteen weeks.

3. Employees working under an agreement made as a result

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[1]United States Department of Labor, The Fair Labor Standards Act, Bulletin, 1938, 7.

[2]Ibid., 8.

of collective bargaining, by representatives of employees certified as bona fide by the National Labor Relations Board, which provides for a maximum of 1,000 hours work in twenty-six weeks or a maximum of 2,000 hours in fifty-two weeks. Any work in excess of twelve hours a day or fifty-six hours a week is to be paid at the rate of time and one-half for any of these exceptions.[1]

6. Child Labor

Simple measures for controlling child labor specify that after October 24, 1938, no producer, manufacturer, or dealer may ship or deliver in interstate commerce any goods produced in an establishment employing "oppressive child labor". The term "oppressive child labor" is interpreted to mean employment of children under 16 years of age, except in such work as has been determined by the Chief of the Children's Bureau of the Department of Labor as not interfering with their schooling, health, or well-being.[2] It is interpreted to include also those 16 or 17 years of age at any work held by the Bureau Chief to be especially hazardous or detrimental.

Child actors, children under 16 employed by their parents or guardians in non-manufacturing and non-mining occupations, and those

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[1] United States Department of Labor, The Fair Labor Standards Act, Bulletin, 1938, 8.

[2] Ibid., 12.

working in agriculture while not legally required to attend school, are exempted from these provisions.[1] The Children's Bureau is to issue regulations regarding acceptable certificates of age, co-operating with all state and local offices issuing employment certificates under state child-labor laws.[2]

7. Summary

The existence of the Wage and Hour Law does not excuse one from complying with any other Federal or state laws fixing higher minimum wages, shorter hours, or setting higher standards for the employment of child labor. This law does not justify an employer in reducing wages which are in excess of that provided under this law. It likewise does not justify his increasing hours of employment which are shorter than those specified in the law. For their own protection against unfair competition, and in order to maintain better employer-employee relationships, employers should file complaints against any violators of this law.

The author believes that Virginia should enact legislation paralleling the Federal Wage and Hour Law, in order that workers engaged in intrastate industry might be given the same protection as is now given in interstate industry.[3]

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[1] Albion G. Taylor, Labor Problems and Labor Law, Prentice-Hall, Inc. New York, 1938, 399.

[2] United States Department of Labor, The Fair Labor Standards Act, Bulletin, 1938, 15.

[3] Albion G. Taylor, Labor Problems and Labor Law, Prentice-Hall, Inc. New York, 1938, 356. Also see Monthly Labor Review, February, 1939, 293-308, especially 297.

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